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OFFICE OF MANAGEMENT AND BUDGET: EVOLVING ROLES AND FUTURE ISSUES

WITH

AN OVERVIEW PREPARED BY THE
COMMITTEE STAFF

PREPARED FOR THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

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FOREWORD

The Committee on Governmental Affairs exercises no more important responsibility than its oversight of the Office of Management and Budget, the Federal budget process, and the Government's financial and other management systems. OMB is the President's agent for the development and execution of that budget. The Office is also responsible for exercising leadership in ensuring the Government has modern and effective financial systems and management processes. As our government enters the Gramm-Rudman-Hollings era, the budget process, the financial systems, and OMB will be in the spotlight. All three will be tested as never before.

Since its reorganization in 1970, OMB has undergone many changes in its roles and responsibilities. For example, two new offices have been added: the Office of Federal Procurement Policy and the Office of Information and Regulatory Affairs. Pursuant to the Paperwork Reduction Act of 1980 and two recent executive orders, the latter office is now much more involved in how the departments and agencies manage their information resources and promulgate regulations. OMB's budget and policy formulation roles, and its role in the development of economic estimates as the bases for budget and resource allocation decisions, have evolved considerably, especially in the last few years.

To assist the Committee in its oversight of OMB, I requested the Congressional Research Service to review the history of OMB; summarize its current roles, responsibilities, and effectiveness; and analyze current trends in government which influence OMB's roles. This document contains the results of that effort. It also contains an overview by the Committee staff which is intended to highlight some of the major issues the Committee may wish to consider in the coming months.

I view this CRS report as a major resource document for the Committee and the Congress. Never before have we compiled in one place a series of scholarly papers which describe and analyze so many of OMB's functions. I want to express my deep appreciation to all those who participated in preparing this document. I believe it makes a lasting contribution to our knowledge and insights about this important arm of the Presidency.

William V. Roth, Jr.,
Chairman.

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OMB: EVOLVING ROLES AND FUTURE ISSUES

AN OVERVIEW BY THE COMMITTEE STAFF

Robert S. Gilmour* and Roger L. Sperry**

The Office of Management and Budget is unquestionably the preeminent central management agency of the Federal Government. It is the focus of attention in the executive budget process and the President's overseer of agency legislative and regulatory initiatives. It is also a major policymaker for a host of managerial and administrative processes including organizational and workforce management, financial systems, procurement, information management, and intergovernmental relations. With the centralization of such functions, OMB has become vulnerable to charges that it has at once overstepped its proper authority, yet underachieved presidential and congressional goals for its high performance. In the deficit-reduction era, attention is riveted to the budgetary process and budgetary control. Yet the need for improved effectiveness of the Government's managerial systems is now more critical than ever.

Budgetary and managerial demands of the 1980s are worlds away from those of 65 years ago when the Government's budget office was first established. The total Federal budget—as well as the national debt—was measured in millions, not in billions and trillions. "Balanced budgets" were not only popular but practicable. Early 20th century efforts to reorganize the government—even in the cause of "economy and efficiency"—were thought unnecessary and defeated.

Before the 1920s, individual agency spending requests were sent directly to Congress without any form of central review. Not until passage of the Budget and Accounting Act of 1921 was the review of spending estimates centralized in a small Treasury agency—the Bureau of the Budget. Before that decade was out, BoB had already become a financial power to be reckoned with. It had also begun to lay the groundwork for the clearance of agency legislative proposals to match its clearance of spending requests.

The enormous expansion of government during the New Deal era dramatically increased the value of staff in organizational and managerial roles. Widespread understanding of this potential was markedly increased by the landmark report of the President's Committee on Administrative Management (the Brownlow Committee) of 1937. The Committee's plea that "the President needs help" was answered two years later by passage of the Executive Reorganization Act making BoB the central institutional component of the newly created Executive Office of the President. In addition to becoming, in fact, "the fiscal arm of the President," BoB also became the President's primary agent for proposing and superintending matters of government organization and managerial reform.

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Corresponding efforts were also made to use BoB resources as the means for more effective—and centralized—financial management. Regulations prescribing uniform agency financial reporting were mandated by executive order in 1940. This effort was abandoned during World War II, however, and was not revived until the current decade. BoB did participate in a joint financial management improvement effort with the General Accounting Office and Treasury Department in the late 1940s and early 1950s, but the Bureau's enthusiasm was short lived.

During the post-War years, BoB assumed still additional managerial roles. With respect to workforce management, as Peter Benda and Charles Levine point out in this volume, "All Presidents since World War II have favored constraints on the overall level of Federal civilian employment and looked to BoB/OMB to play the lead role in monitoring and enforcing limitations on staffing levels throughout the Executive Branch." BoB's role in intergovernmental management, similarly implicit in the budget function, was made explicit as federal grant-in-aid programs for states and municipalities mushroomed in the 1950s and 1960s.

In 1970, BoB became the Office of Management and Budget—OMB—with the stated goal that management and budget functions be given co-equal status. Since that 1970 reorganization, there have been substantial changes in OMB's roles and resonsibilities. In 1974, following the report of the Commission on Government Procurement and increasing congressional dissatisfaction with the proliferation of federal procurement rules, the Office of Federal Procurement Policy was established within OMB and charged with the development of overall procurement policy. Similar congressional concern with the multiplication of Federal information and paperwork requirements led to OMB responsibilities in that area and, in part, to a major new role in the regulatory process.

During the 1970s, a series of presidential directives increased OMB involvement in the review of agency regulations. These executive orders followed an explosive growth in the number and scope of rules—laws, by force and effect—made by administrative process, not by Congress. In response to a wide array of congressional mandates for the promulgation of agency-made laws governing health, safety, environmental, educational, and other concerns—the "new social regulation"—the volume of agency rules quickly began to exceed the statutory output of Congress. OMB became the logical presidential choice for new clearance responsibilities.

During this period, increasing public information demands—data to be supplied, forms filled in, and applications completed—were imposed by these same regulations and also by other agency policies and guidelines. This suggested the need for a paperwork clearinghouse. The Paperwork Reduction Act of 1980 addressed these concerns, plus the need for statistical policy oversight, by creating the Office of Information and Regulatory Affairs (OIRA) as a special unit within OMB. Subsequently, executive orders commissioned OIRA as the paramount agency for central regulatory clearance.

In light of the increased scope and complexity of government, there is no question that the Government now needs strong central budget and management capacities. OMB now shares responsibility for budgetmaking with many other actors. And, paradoxically, OMB's recent effectiveness in advancing the Presient's political agenda through the budget process may have diminished its influence on final budgetary outcomes. Congress has come to understand OMB as the agent of a point of view, not as a source of "neutral competence." Accordingly, in congressional offices, the President's budgets of the past two years have been widely termed, "dead on arrival"—even before they were persented. Increasing credibility—and deference—has been given the Congressional Budget Office as having "the best numbers in town." In addition, the General Accounting Office has been awarded major new roles in the budgetary process by the Balanced Budget and Emergency Deficit Control Act of 1985, the Gramm-Rudman-Hollings law.

There is also a widespread view that the "M" side of OMB has fallen far short of the expectations held at the time of the budet office reorganization in 1970. Notwithstanding the Reagan Administration's management initiatives, such as Reform '88, diverse study groups have concluded that deficiencies in the Government's central management capability have yet to be remedied. This is evident, and particularly acute, in diminished departmental and agency capacities to plan and manage their affairs.

The Congressional Research Service studies presented in this volume represent the most thorough and comprehensive scholarly effort yet undertaken to trace the evolution of OMB's various roles and to assess the institutional effectiveness of this key arm of the presidency. The first three studies are capstone treatments of OMB's primary responsibilities—for development of the executive budget and for the supervision of federal management systems and organization. The eight studies that follow examine the introduction and development of additional clearance and management functions under OMB's purview—central legislative and regulatory clearance; paperwork and statistical policy management; procurement; financial management; workforce management; and intergovernmental relations. CRS staff have also prepared an extensive annotated bibliography, a comprehensive compilation of legal authorities, and an index of legal authorities and directives as appendices to the studies presented here.

Any "overview" of OMB's contemporary responsibilities inescapably directs attention to that Office's fundamental contributions to the budgetary process and to the general oversight of Federal management. Of OMB's expanded roles in central clearance and management, two—regulatory clearance and financial management—are ones of repeated and critical concern to the public and Congress. These two cirtical roles draw our attention here as well.

FEDERAL BUDGET PROCESS

Budgeting has become the dominant policymaking process for both Congress and the executive. Both branches have expanded their capacities to make informed budgetary decisions. Preparing the President's budget, following its progress through Congress, and overseeing its execution continue to be OMB's primary responsibilities if not its all-consuming tasks. Once a largely ministerial chore performed by career bureaucrats, budgeting at OMB has become a policy-setting and sometimes partisan political process carried out increasingly by presidential appointees.

Decisions on program funding are now made and directed from the top down, wholly reversing the traditional pattern where estimates "welled up" from the lowest reaches of the agencies. As Virginia McMurtry observes in this volume, this change in direction was the result not only of "Director [David] Stockman's preference for a top-down style of decision-making" and his "encyclopedic knowledge" but also of a more general recognition that budget cutting requires centralized decisionmaking if the Government's programs are to be weighed on the same scale.

Sophisticated information systems now give the budget director and his staff the capability to formulate detailed program funding proposals within overall guidance established by the President and his principal assistants. Staff resources, such as the Legislative Strategy and Support Group and an expanded bill-tracking staff, enable the director to negotiate with Capitol Hill, often without the need for agency participation.

Since enactment of the Congressional Budget and Impoundment Control Act of 1974, OMB has become much more involved in congressional budget deliberations in addition to its executive budget functions. At the same time, Congress has not only developed its capacity to make marco-level budget decisions through creation of the Congressional Budget Office, it has also enhanced its operational abilities with the development of substantial professional staffs for both House and Senate Budget Committees.

In addition, with adoption of the Balanced Budget and Emergency Deficit Control Act of 1985, Congress has also tapped the considerable resources of the General Accounting Office for deployment to the budget process, though the Comptroller General's precise role in this process has been called into question as a matter of constitutional law.

Changes in the budget reconciliation process, starting in 1980, permitted OMB's participation in formulating the congressional budget to an even greater extent since major changes were to be made not only in funding levels but also in program authorization statutes. The omnibus character of reconciliation bills, formatted under the pressure of external time constraints, adds great leverage for OMB's broad gage approach. The 1981 reconciliation bill, in particular, demonstrated the saliency and applied power of OMB to effect major policy changes and much reduced Federal funding for targeted programs. With the substantial growth in budget deficits during the 1982–85 period, however, OMB became markedly less effective in achieving the President's budgetary goals. Indeed, the protracted legislative-executive stalemate over budget policy since 1981 became a major factor prompting Congress to adopt the strict, self-enforcing mechanisms of the Balanced Budget and Emergency Deficit Control Act of 1985.

Whatever the final outcome regarding the Comptroller General's participation in the deficit reduction process, congressionally mandated budgetary ceilings for 1986 through 1991 almost certainly require OMB to exercise tighter control of agency funding and thus the exertion of even greater influence on policymaking in the executive branch. Conversely, OMB will be sharing responsibility with CBO and others for projecting future deficits and otherwise assisting the Congress in meeting deficit reduction targets.

Any assessment of the workability of the new budget process is at this point premature. That the problem of bringing the Federal deficit under control will face Congress and the President for many years, however, may be predicted with confidence. In the continuing tension over budget practices, OMB's role vis-a-vis the other actors in the budget process will surely continue to evolve. Congress will need to assure that OMB has the necessary tools to provide the President the support he needs to develop and execute the budget and to furnish Congress the information and support needed to arrive at its own budget calculations and decisions.

MANAGEMENT IMPROVEMENT

Congress anticipated that BoB/OMB would play a strong role in overseeing and improving the management of government beginning with the 1921 statutory charter. Benda and Levine, in their paper on OMB's management role, define this management function in the following terms:

> To provide leadership on the President's behalf in addressing general problems bearing on the organization and effectiveness of the executive branch, and to assist in the design and implementation of government-wide strategies aimed at enhancing the ability of Federal agencies to carry out their statutory missions.

Generally, OMB's management efforts, whether done in the name of economy and efficiency or enhancing Federal program effectiveness, have taken a back seat to budget functions and have, most of the time, fallen short of expectations. Management improvement activities have depended as much on the preferences of individual Presidents or OMB leadership as they have on any coherent, continuous concept of government management. Consequently, efforts to strengthen the management side of OMB proved to have only limited or temporary effect.

The most visible and structured effort to upgrade this management function occured in 1970 when BoB was reorganized and rechristened "OMB" to emphasize the co-equal status of "management". An ambitious agenda of management activities was established, including a leadership role in program evaluation and coordination; improvement of executive branch organization, information, and management systems; and development of executive talent. But by 1973, many management functions had been transferred to the General Services Administration and most of the remaining management staff had been merged into the budget divisions. Soon thereafter, "management by objectives," the primary management initiative of OMB's early years, was abandoned.

A 1977 reorganization plan re-established co-equal budget and management units in OMB, but primary emphasis was given to government reorganization and agency consolidation through the

President's Reorganization Project. Congress eventually approved ten reorganization plans submitted during the Carter administration, but these brought about only limited changes, falling well below the administration's well announced goals.

The Reagan Administration's attention to management issues has largely been driven by the budget process and a will to reform spending priorities, improve administrative efficiency, and reduce costs. Tied as they are to the budget process, OMB's recently instituted management reviews and automated progress reporting system give that office a more systematic means for influencing agency behavior on management issues. Aggressive use of these tools has made possible specific OMB guidance and direction on a broad range of management initiatives. Yet this particular form of OMB involvement—in the details of agency operations—comes at a time when senior Federal managers and organizations such as the National Academy of Public Administration, are pointing to the mismatch between managers' authority and responsibility, and to lack of accountability and overregulation as impediments to government performance.

In 1982, the President appointed the President's Private Sector Survey on Cost Control—the Grace Commission—with a broad charter to find ways to cut costs and improve management. This Commission operated relatively independently from OMB, although the Office has since been assigned a follow-up role on the Commission's recommendations. Later that same year, the Administration launched Reform '88, the President's Management Improvement Program, as a high-visibility, broad-scale set of initiatives spearheaded by OMB. The inadequacy of OMB's management resources and staff appear to be an impediment to full implementation of this Program, nonetheless. In addition, many such initiatives require new investments in agency systems and processes, but stringent Gramm-Rudman-Hollings budget reduction targets make such investments seem improbable.

In spite of these difficulties, the administration's management reforms do appear to be making significant gains in paperwork reduction, in lowering periodical and publication costs, and in modernization of administrative support systems. The General Accounting Office reports additional improvements in cash and credit management and debt collection. Furthermore, the Inspectors General have become a more visible, somewhat more unified force in the fraud-waste-and-abuse campaign. The unrealistically high initial expectations for Reform '88 have given way to more practical approaches to specific problems.

The OMB management staff and cognizant White House officials are aware of OMB's past record. They have been trying to improve on it by taking the longer view, forging a closer link to the budget process through the management reviews, establishing sophisticated tracking systems, and by having agency officials become more involved through mechanisms such as the President's Council on Management Improvement.

The greatest obstacle to further management improvements, in addition to OMB's preoccupation with the budget and the commitment of limited resources to management issues generally, is a persistent confusion between management and control. The thrust of

OMB's managerial improvement effort has consistently been made in terms of cost cutting and administrative efficiency to the near exclusion of capacity-building and program effectiveness. The development of managerial resources at the agency level through the annual review process has, often as not, been overtaken by OMB's urge to micro-manage agency initiatives. Little attention has been accorded human resource management, for example, except in the context of agency cutbacks and reductions in force. So long as OMB's predominant motivation is to achieve "scorable savings" in the budget process, however, it seems likely that the exercise of central administrative controls—regulations, directives, and reporting requirements—will be far more compelling than the development of managerial capacity.

REGULATORY CLEARANCE

The Reagan Administration's designation of OMB's Office of Information and Regulatory Affairs (OIRA) as its central clearance arm for regulatory policy capitalized on a national mandate for regulatory relief and set in motion—administratively—the most sweeping reform of the regulatory process in 35 years.

Where administrative rulemaking had been almost exclusively the domain of individual agencies and independent regulatory commissions, now promulgation of administrative regulations would be subjected to OMB scrutiny for conformity with the President's program. In addition, under the commands of Executive Order 12,291 of 1981, all new rules, including reexaminations of any existing rules, are to be reviewed with regard to available alternatives and for consistency with other regulations. "Major rules"—having an economic impact of over $100 million—will be subjected to analysis for cost-benefit effectiveness.

As guided by the most recent presidential directive on the subject, Executive Order 12,498 of 1985, OMB involvement in administrative rulemaking now precedes agency notice of its intentions on specific rules to Congress and the public. Each agency must develop a "Regulatory Program" identifying "all significant regulatory actions. . . . planned or underway, including . . . the development of documents that may influence, anticipate, or could lead to the commencement of rulemaking proceedings."

Once a proposed regulation has actually been announced by an agency and opened to public comment, OMB has additional, off-the-record opportunities to influence the decisionmaking process. Opportunities for OMB to influence the content of agency rules is also structured into the process after the public comment period has been closed. As Morton Rosenberg concludes in his study of regulatory management in this volume:

> Taken together, Executive Orders 12,291 and 12,498 provide the President, through OMB, with a formidable mechanism to significantly influence, if not effectively control, regulatory decisionmaking of covered agencies at all stages of the rule formulation and development process.

Ironically, the enabling legislation for OIRA—the Paperwork Reduction Act of 1980—provided no specific authority for the implementation of regulatory reform. The Act did direct specific approaches to improvements and cost reductions in the collection, management, and dissemination of information, and it is here that OMB has repeatedly been criticized for failing to fulfill its legislative mandate.

No one doubts that Congress has the power to confirm, redirect, or even abolish central regulatory clearance, but so far in this decade, the two serious efforts to establish this process in law have failed. In the absence of legislation, the regulatory clearance process is defined by presidential proclamation.

FINANCIAL MANAGEMENT

In recent years, the concept of financial management has been broadened substantially. No longer are financial managers concerned merely with financial transactions, the legality of expenditures, and balancing the books. OMB now defines "financial management system" as "the sum of all systems—both manual and automated—that are used to collect, classify, analyze, and report data on financial transactions and resources, and generate financial information in support of the agency's mission." In a 1985 report, the Comptroller General took this definition one step farther, holding that financial management encompasses "all or part of the processes and functions of planning and programming, budgeting, budget execution and accounting, and audit and evaluation."

In keeping with the expanded understanding of financial management, OMB's role in this field has evolved from one that was primarily concerned with systems supporting the budget process to a wide-angle focus on agency financial systems and information availability to top executive branch managers. Virginia McMurtry's review of this subject notes further that, "financial management issues recently have gained greater visibility and likely have gained a higher priority than some of the other functions performed by OMB."

Over the past two presidential administrations, OMB initiatives in cash and credit management, debt collection, internal control reviews, and strengthened Inspector General functions have all yielded promising results. OMB's financial management unit has been moved from the budget to the management side, bringing it more in line with the broader financial management concept and other government-wide management initiatives. In December 1984, OMB issued a new circular establishing policies and procedures for agency financial management systems, which was followed three months later by an OMB manual on financial management and accounting objectives. Agencies were further directed to prepare five-year financial system plans.

In the past several years, Congress has also devoted greater attention to financial management, enacting a series of statutes—all giving OMB a major role. These included the Federal Managers' Financial Integrity Act, the Debt Collection Act, the Prompt Payment Act, and the Single Audit Act.

Serious difficulties resulting from the historic decentralization and fragmented growth of financial management systems remain despite progress made during the recent past. In its Fiscal Year

1987 management report, OMB confirmed that a number of departments and agencies could not provide reasonable assurance that their internal control systems conformed with the requirements of the Financial Integrity Act. In addition, numerous agency accounting systems did not conform to appropriate accounting principles and standards, including those in 81 of 146 such systems in the Department of Defense.

The Comptroller General, the Grace Commission, the Association of Government Accountants, and Price Waterhouse have all expressed concern about what they regard as serious weaknesses in Federal agency financial systems: inadequate internal control and accounting systems that expose Government programs to fraud, waste, and abuse; and insufficient leadership at the central agency level to bring about the fundamental financial system reforms needed for a trillion-dollar government operation. Studies by these organizations all conclude that fundamental reforms, including institutional changes, will be required if the Government's financial management problems are to be remedied. No consensus has emerged on the exact dimensions of such reforms, but there is a growing consensus that existing financial systems contain basic flaws that demand urgent attention.

The time may have arrived for the Congress to consider a number of current proposals to upgrade central financial leadership, either in OMB or elsewhere. Additional legislation may also be needed to bring about agency financial system improvements, a goal established by the Accounting and Auditing Act of 1950, but still unrealized after more than 35 years.

Concluding Observations

While OMB's role in the budget process is still evolving, there does not appear to be a strong movement in Congress or elsewhere to make basic changes in the Office's charter on budgetary matters. The same cannot be said for the management side of OMB. Shortcomings in OMB's management reform efforts over the years have led to numerous institutional reform proposals. Organizations such as GAO, the National Academy of Public Administration and the Grace Commission have all concluded that the record warrants a serious search for alternatives.

Finding a workable solution to the problem of providing sufficient but not overbearing central direction and control of Federal management is a complicated undertaking. Benda and Levine list five prominent structural alternatives which are summarized below:

1. Upgrading the M-side of OMB;
2. Combining M-side functions with the Office of Personnel Management in a new Office of Management;
3. Creating an Office of Federal Management encompassing OMB's budget and management functions;
4. Separating the management from the budget functions in an Office of Federal Management; or
5. Creating an Office of Federal Management containing the M-side functions, plus OPM and GSA policy functions. (The re-

maining OPM and GSA activities would be combined in an Office of Operations.)

Taken as a whole, such proposals indicate a growing disenchantment in some circles with the present structure. While organizational structure is by no means the only determinant of administrative performance, it is well known to be vitally important. Taken in conjunction with desired changes in managerial systems design, an effective structure for central managerial oversight will be critical to the success of any reform or upgrading effort. Whatever the future organization of OMB, major budget reductions will necessitate lean, modern, and effective Federal management processes operating at highest capacity and lowest possible cost.

LETTER OF SUBMITTAL

Congressional Research Service,
The Library of Congress,
Washington, DC, February 10, 1986.

Hon. William V. Roth, Jr.,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: I am pleased to transmit to you the enclosed collection of reports, tentatively planned for inclusion in the Committee's forthcoming print on "Office of Management and Budget: History, Current Roles, and Future Issues."

In your letter of request, dated February 25, 1985, you asked the Congressional Research Service to review "the history of the Office of Management and Budget; summarize its current roles, responsibilities, and effectiveness; and analyze current trends in government which influence OMB's roles and responsibilities." The letter also suggested particular topics to be addressed, including a listing of nine specific policy and oversight functions performed by OMB, with a request that CRS "assess and analyze how each is exercised by OMB, including its current organization, policies, regulations, and staffing, and its relationships with other elements of the executive branch."

Because of the scope of the study and the diversity of oversight and policy authority exercised by OMB, CRS personnel in consultation with committee staff agreed upon a research outline consisting of a series of reports treating most major functions. This allowed for utilizing the subject expertise of several CRS staff, and accommodated the desire to include a Committee-prepared "Overview and Introduction" distinct from the CRS contributions to the volume.

The enclosed collection consists of two longer pieces addressing, respectively, the evolution of the broad budget and management responsibilities of OMB, a series of nine papers reviewing more specific oversight and policy functions of OMB, an annotated bibliography, and an appendix of OMB's legal authorities. This OMB study was an interdivisional effort. Our Government Division staff, including Frederick H. Pauls, Chief, Daniel P. Mulhollan, Assistant Chief, and Virginia A. McMurtry, Specialist, coordinated the project.

CRS staff members who wrote papers were: Peter M. Benda and Charles H. Levine, Senior Specialists office; Morton Rosenberg and Mark Gurevitz, American Law Division; Jeanne E. Griffith, Education and Public Welfare Division; Virginia A. McMurtry, Ronald C. Moe, Sandra S. Osbourn, and Stephanie Smith, Government Division; and George H. Walser, Library Services Division.

We trust that these reports will be of assistance to the Committee and to the Congress in the continuing task of overseeing executive branch operations and the role of OMB.

Sincerely,

JOSEPH E. ROSS,
Acting Director.

OMB'S ROLE IN THE FEDERAL BUDGET PROCESS

Virginia A. McMurtry *

The Budget and Accounting Act of 1921 established a national budgetary system for the Federal Government, with the newly created Bureau of the Budget (BoB) assigned a central role: "to assemble, correlate, revise, reduce, or increase the estimates of the several departments or establishments." 1/ In 1970 BoB was restructured as the Office of Management and Budget (OMB), pursuant to Reorganization Plan No. 2 of 1970. While additional managerial duties were assigned to the OMB, major responsibilities of the Office of Management and Budget (OMB) since 1970 continue to include preparation of the annual Federal budget and supervision and control of its administration or execution.

This paper focuses on OMB and the budget process during the last fifteen years. The section which follows provides some necessary background on the structure and organization of OMB (as inherited from BoB along with subsequent changes) relevant to its responsibilities for the Federal budget process. The next section reviews the history of executive budgeting in the the Federal Government, looking at traditional features of the process and then turning to a consideration of recent changes. The third section examines major developments in the evolution of executive-legislative branch institutional relationships and the Federal budget process from 1970-1980. The fourth section continues the saga of OMB-congressional relations during the Reagan Administration. The final section reviews some recent proposals relating to budget reform, and also provides some initial impressions concerning the impact of Public Law 99-177 (Gramm-Rudman-Hollings) on OMB and the budget process.

BACKGROUND ON THE STRUCTURE OF OMB

Over the years the internal organization of BoB/OMB has fluctuated between two basic patterns--an overall structure

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* Specialist in American National Government, Government Division, Congressional Research Service, Library of Congress. The author acknowledges the research assistance provided by Kymberlee A. Franklin, who served as an intern with the Government Division during the summer of 1985.

1/ Public Law 67-13 (June 10, 1921); 42 Stat. 22.

characterized by a budget side and a management side, or a structure along programmatic lines, with management personnel and budget examiners integrated into various functional units. 2/ The initial structure following the creation of OMB in 1970 represented the bifurcation pattern, with the new deputy director, Caspar Weinberger, overseeing all budget activities, and an associate director heading up the remaining management components. 3/

However, before long, OMB became subject to the alternative structural arrangement. In 1973, under new Director Roy Ash and Deputy Director Frederic Malek, OMB structure was changed to the more functional basis (as had been tried with somewhat limited success in the 1950s), with management personnel integrated into the four major program divisions along side the budget examiners. Four noncareer program associate directors positions (PADs), were created, each to oversee a cluster of program components, thus adding a new layer of political appointees between the career staff and the Director. The Carter Administration carried out another reorganization of OMB in 1977, returning to the model of separate budget and management sides, and establishing two additional noncareer slots: executive associate director, budget and executive associate director, reorganization and management. 4/

The annual budget justification materials prepared for the Committees on Appropriations usually have provided a rather detailed discussion of BoB/OMB's internal organization, and serve as a convenient reference for the agency's administrative history.

2/ While the concern here is with that portion of the OMB structure involved with the budget responsibilities, it is necessary to view changes in those budget-related units within the organizational framework for the agency as a whole. Also see discusssion of OMB organization in OMB's Management Role: Issues of Structure and Strategy," by Peter Benda and Charles Levine, elsewhere in this volume.

3/ Mosher, Frederick C. A Tale of Two Agencies: A Comparative Analysis of the General Accounting Office and the Office of Management and Budget. Baton Rouge, Louisiana State University Press, 1984. p. 113.

4/ See Ibid., pp. 106-114. Also see Berman, Larry. The Office of Management and Budget and the Presidency, 1921-1979. Princeton, Princeton University Press, 1979, pp. 136-142 for collection of BoB/OMB organization charts.

However, an OMB organization chart has not been included in the hearings records since 1982. 5/

Chart 1 below, depicts OMB organization as of early 1982, while Chart 2 (prepared for OMB internal use) reflects the structure as of June 1984. Several changes occurred in that portion of the OMB organization coming under the Associate Director for Management; the three divisions now contained in this segment include the Management Improvement Division, Financial Management Division, the Planning and Communications Management Division, with a subsection for the Secretariat. 6/

Of these recent changes in OMB organization, the one of special interest with regard to the budget function occurred in 1982 when the Financial Management Branch, which had been located in the Budget Review Division, was transferred to the management side and became a division under the Associate Director for Management. Initially titled the Finance and Accounting Division, the unit is currently called the Financial Management Division. The former head of the Financial Management Branch now serves as the Deputy Associate Director for Financial Management.

The budget side of OMB has been its traditional strength. In addition to preparation of the budget, this staff oversees the spending authorized by Congress, reviews and evaluates Federal programs, compiles fiscal and economic forecasts, and participates in the analysis and development of budget, tax, fiscal, and credit policies. In 1985, of the 594 permanent positions in OMB, 369 were assigned to the budget divisions, including 292 in the four program subunits and 77 places allocated to the Budget Review Division (BRD). 7/ With the addition of other staff in units

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5/ U.S. Congress. House. Committee on Appropriations. Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1983. Hearings before Subcommittee, 97th Cong. 2d Sess., Part 3, Executive Office of the President, June 16, 1982. Washington, U.S. Govt. Print. Off., 1982. p. 611. Perhaps the apparent recent lack of attention to issues of internal OMB organization simply reflects preoccupation with other matters, although it also has been suggested that David Stockman had limited interest in such administrative details.

6/ U.S. Congress. House. Committee on Appropriations. Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1986. Hearings before Subcommittee, 99th Cong., 1st Sess., Part 3, Executive Office of the President, April 23, 1985, p. 664. For further discussion on recent changes in the organization of the management component, see study by Levine and Benda.

7/ House Appropriation Hearings for FY 1986, p. 629.

CHART 1
OFFICE OF MANAGEMENT AND BUDGET, 1982

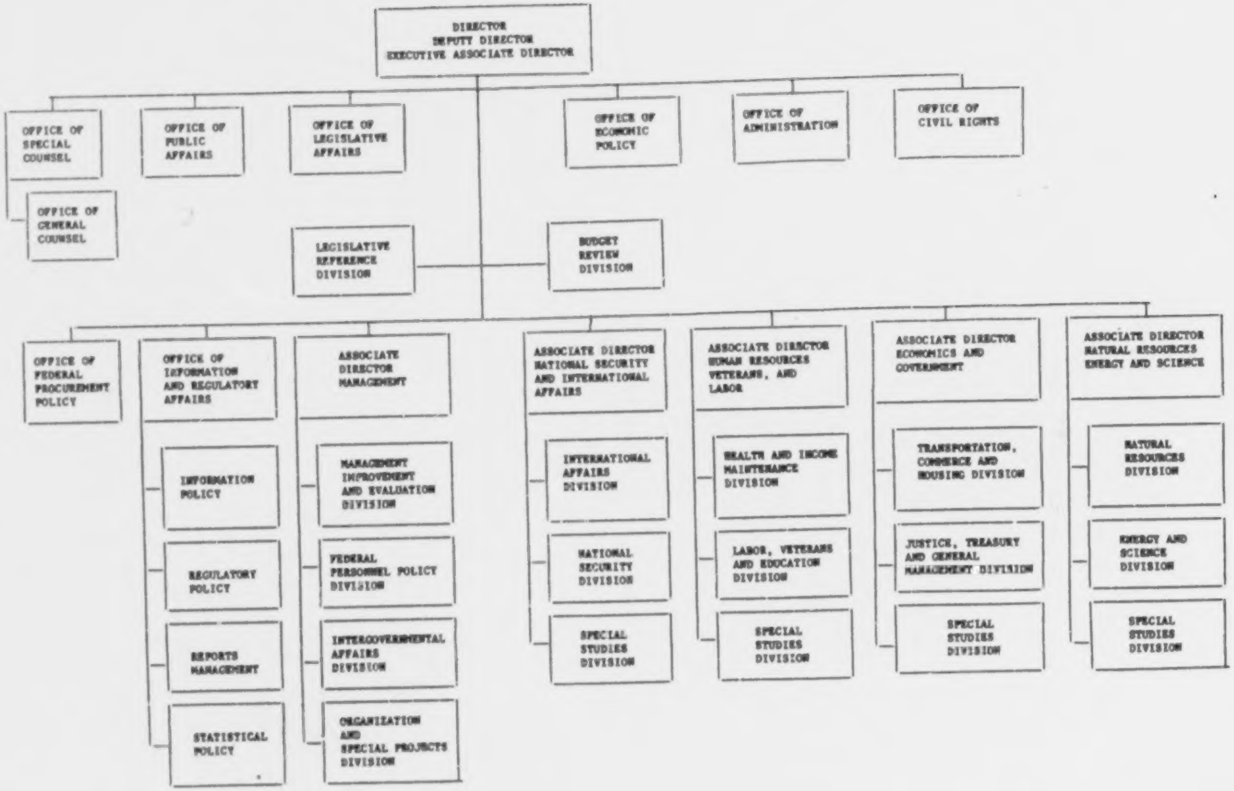
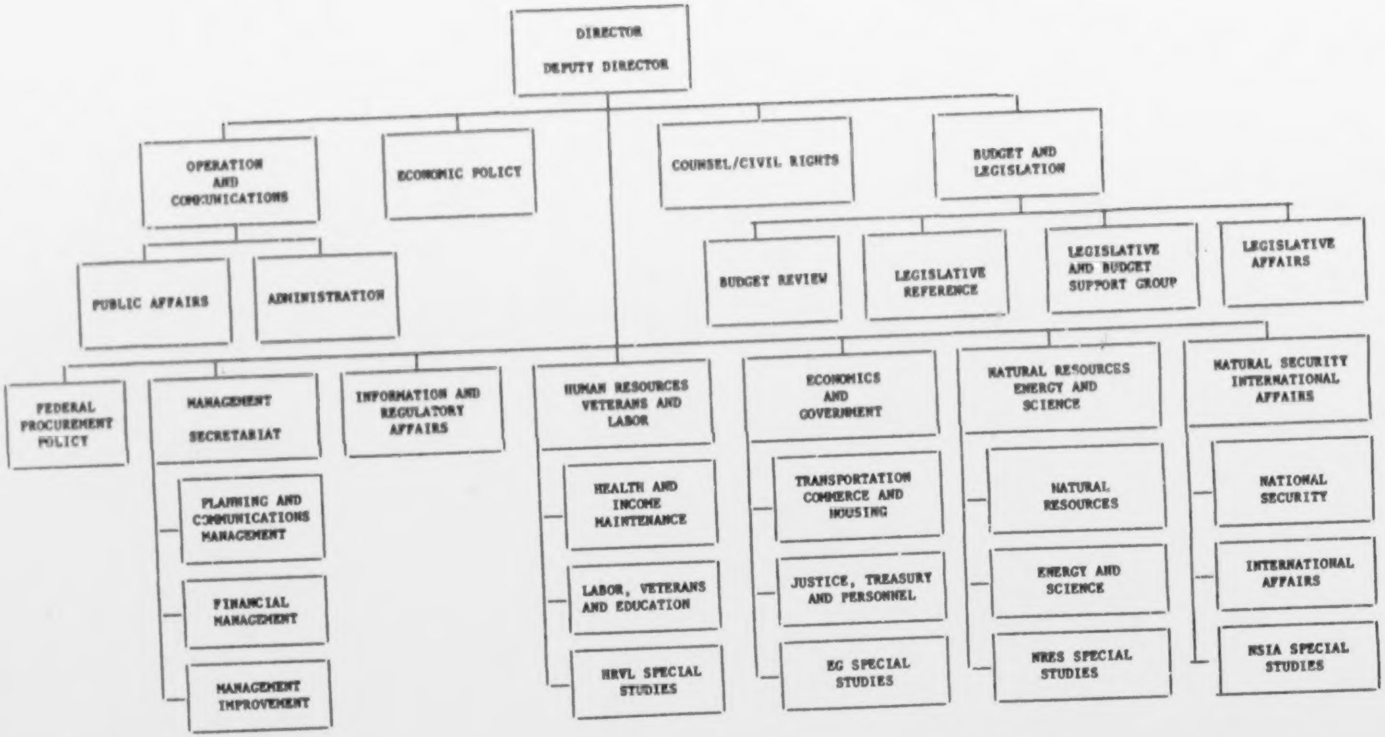

DIRECTOR
DEPUTY DIRECTOR
EXECUTIVE ASSOCIATE DIRECTOR
OFFICE OF SPECIAL COUNSEL
OFFICE OF GENERAL COUNSEL
OFFICE OF PUBLIC AFFAIRS
OFFICE OF LEGISLATIVE AFFAIRS
OFFICE OF ECONOMIC POLICY
OFFICE OF ADMINISTRATION
OFFICE OF CIVIL RIGHTS
LEGISLATIVE REFERENCE DIVISION
BUDGET REVIEW DIVISION
OFFICE OF FEDERAL PROCUREMENT POLICY
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
INFORMATION POLICY
REGULATORY POLICY
REPORTS MANAGEMENT
STATISTICAL POLICY
ASSOCIATE DIRECTOR MANAGEMENT
MANAGEMENT IMPROVEMENT AND EVALUATION DIVISION
FEDERAL PERSONNEL POLICY DIVISION
INTERGOVERNMENTAL AFFAIRS DIVISION
ORGANIZATION AND SPECIAL PROJECTS DIVISION
ASSOCIATE DIRECTOR NATIONAL SECURITY AND INTERNATIONAL AFFAIRS
INTERNATIONAL AFFAIRS DIVISION
NATIONAL SECURITY DIVISION
SPECIAL STUDIES DIVISION
ASSOCIATE DIRECTOR HUMAN RESOURCES VETERANS, AND LABOR
HEALTH AND INCOME MAINTENANCE DIVISION
LABOR, VETERANS AND EDUCATION DIVISION
SPECIAL STUDIES DIVISION
ASSOCIATE DIRECTOR ECONOMICS AND GOVERNMENT
TRANSPORTATION, COMMERCE AND HOUSING DIVISION
JUSTICE, TREASURY AND GENERAL MANAGEMENT DIVISION
SPECIAL STUDIES DIVISION
ASSOCIATE DIRECTOR NATURAL RESOURCES ENERGY AND SCIENCE
NATURAL RESOURCES DIVISION
ENERGY AND SCIENCE DIVISION
SPECIAL STUDIES DIVISION

CHART 2
OFFICE OF MANAGEMENT AND BUDGET, JUNE 1984


DIRECTOR
DEPUTY DIRECTOR
OPERATION AND COMMUNICATIONS
ECONOMIC POLICY
COUNSEL/CIVIL RIGHTS
BUDGET AND LEGISLATION
PUBLIC AFFAIRS
ADMINISTRATION
BUDGET REVIEW
LEGISLATIVE REFERENCE
LEGISLATIVE AND BUDGET SUPPORT GROUP
LEGISLATIVE AFFAIRS
FEDERAL PROCUREMENT POLICY
MANAGEMENT SECRETARIAT
PLANNING AND COMMUNICATIONS MANAGEMENT
FINANCIAL MANAGEMENT
MANAGEMENT IMPROVEMENT
INFORMATION AND REGULATORY AFFAIRS
HUMAN RESOURCES VETERANS AND LABOR
HEALTH AND INCOME MAINTENANCE
LABOR, VETERANS AND EDUCATION
HRVL SPECIAL STUDIES
ECONOMICS AND GOVERNMENT
TRANSPORTATION COMMERCE AND HOUSING
JUSTICE, TREASURY AND PERSONNEL
EG SPECIAL STUDIES
NATURAL RESOURCES ENERGY AND SCIENCE
NATURAL RESOURCES
ENERGY AND SCIENCE
NRES SPECIAL STUDIES
NATURAL SECURITY INTERNATIONAL AFFAIRS
NATIONAL SECURITY
INTERNATIONAL AFFAIRS
NSIA SPECIAL STUDIES

coming under the Executive Associate Director for Budget and Legislation besides BRD, almost two thirds of OMB personnel were concerned with the budget side.

The BRD serves as the lead staff unit for OMB's responsibilities in preparing the Federal budget. In this division the focus is on the budget as whole in contrast to the narrower views of the respective program divisions.

According to the agency materials submitted for the fiscal year 1986 appropriation hearing, the Budget Review Division's duties include the following:

1. Coordination of the executive branch budget process;
2. Development and improvement of the Federal budget formulation and execution systems;
3. Coordinating preparation of the President's budget and of rescission and deferral messages required by the 1974 law;
4. Maintaining up-to-date data base on executive and legislative budget actions;
5. Tracking current legislative status of Administration's budget proposals;
6. Development and operation of the system for compliance with personnel ceilings in the executive branch;
7. Analysis of economic and budgetary projections;
8. Development of economic assumptions for budget estimates; and
9. OMB liaison with legislative and judicial branches on matters related to the Federal budget process. [8]

The workload of the BRD is divided among four branches. The Budget Preparation Branch, among its duties, schedules and analyzes estimates for the annual budget cycle and coordinates compliance with the Impoundment Control Act (part of the 1974 Budget Act, as described below). Concerns of the Fiscal Analysis Branch include economic and budgetary projections, credit program and tax policy issues, development of OMB's economic assumptions, and liaison with the Congressional Budget Office and Budget Committees. The Resources System Branch is responsible for instructing the agencies on fiscal and budgetary procedures (such as budget presentation and apportionment) and in developing terms, concepts, and definitions relating to budget formulation and execution; this unit also cooperates with GAO and Treasury in standardizing classification and codes for budget data, and coordinates OMB's work in Federal employment controls. 9/

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[8] Ibid., p. 636.

The newest branch of the Budget Review Division, established by David Stockman and quickly assuming an influential role within the OMB structure, is the Central Budget Management Branch. Initial mention of this unit in the appropriation justification materials in 1982 noted:

> The new Central Budget Management Staff will maintain an up-to-date data base on Executive and Legislative budget actions and coordinate analysis of budget data conducted by other BRD branches. The unit is developing close links with technicians in the Legislative Branch. 10/

The focus of the Central Budget Management Branch's existence has been the development of the Central Budget Management System (CBMS).

The CBMS has been defined as "a decision support and management information system for the central support of macro budget formulation and analysis." 11/ Another description has characterized CBMS as "a computerized operation that tracks and keeps score of budgetary decision making in Congress, projects the budget implications of alternative decisions along a variety of dimensions, and is increasingly used to keep score of all OMB decision making as the budget season progresses." 12/

9/ U.S. Congress. House. Committee on Appropriations. Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1982. Hearings before Subcommittee, 97th Cong., 1st Sess., Part 3, Executive Office of the President, May 13, 1981. Washington, U.S. Govt. Print. Off., 1981. pp. 241-243. Also House Appropriations Hearings for Fiscal Year 1983, pp. 626-627. The justification materials submitted for subsequent years have not detailed the duties of the respective BRD branches. However, in addition to the recent transfer of the Financial Management Branch to the management side of OMB, as noted above, another former BRD unit, the Federal Program Information Branch, was transferred out of OMB to General Services Administration following the reassignment of responsibility for preparation of the Catalog of Federal Domestic Assistance, pursuant to Public Law 98-169.

10/ House Appropriation Hearings for FY 1983, p. 627.

11/ American Association for Budget and Program Analysis, Spring Symposium Proceedings Summarized. Newsletter, May/June 1085, p. 9.

12/ Heclo, Hugh. Executive Budget Making. In Mills, Gregory B., and John Palmer, eds. Federal Budget Policy in the 1980s. Washington, Urban Institute Press, 1984. p. 281.

The development of the Central Budget Management System (CBMS) created a capability previously lacking in OMB and thereby increased its capacity to become involved in the congressional budget process as well as altering procedures for executive budgeting within OMB (these effects of the CBMS are described in subsequent sections).

The four program-division clusters on the budget side of OMB include National Security and International Affairs; Human Resources, Veterans, and Labor; Economics and Government; and Natural Resources, Energy, and Science. Each of these clusters, subunits of which are called "divisions", is responsible for examining budget requests, programs and operations, and any legislative proposals from the agencies assigned to it. There are also special studies divisions in all four clusters that conduct comprehensive reviews of selected programs to assist in the budget and policy decisions.

The OMB budget examiners or analysts within the various budget program divisions are responsible for tracking the different agencies and functions of the executive branch and constitute the careerists who have historically provided the backbone of the BoB/OMB organization. In recent years the budget examiners have also become more involved with OMB-congressional relations duties. According to a study of the role of the OMB examiners in 1982: "The first two and a half years of the Reagan Administration have witnessed an unprecedented expansion of the careerists' monitorship roles and the consumption of time spent tracking legislation and cultivating congressional contacts." 13/

One of David Stockman's pet workload measures for OMB, regularly included in his testimony supporting the annual agency budget request before the Appropriations Committees, was the average amount of agency funds overseen by an OMB budget examiner. In 1985, he testified before a House Appropriations Subcommittee:

> I calculate that each budget examiner who actually has an assigned agency, program or account, has to handle $5 billion a year out of our $1 trillion budget. Some have a lot more, some less, but the average is $5 billion.
>
> Ten years ago it was less than half that. You can see that we are stretched pretty thin and every one of our budget examiners has an awfully large amount of public money to worry about. 14/

The previous year (in 1984 for FY 1985) Stockman cited as a measure of workload increase for OMB since 1980 a jump in fifty-eight percent in

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13/ Tomkin, Shelley. Playing Politics in OMB: Civil Servants Join the Game. Presidential Studies Quarterly, v. XV, 1985, p. 166-167.

14/ House Appropriation Hearings for Fiscal Year 1986, p. 551.

the amount of outlays the average budget examiner would be responsible for reviewing. 15/

Despite such recognition of the important role of the examiners within OMB, it has been suggested that since 1980 the status of the BRD staff has been enhanced within the organization at the expense of the program divisions. Of course divergence in outlook between the program divisions and the Budget Review Division is not a new development:

> By tradition, examiners chided BRD staff for being accountants and number crunchers who did not understand the programmatic content of budgets. BRD loyalists could respond that examiners never understood the professional skills and general viewpoint needed to produce a coherent budget document. 16/

However, according to one observer, the running of OMB under Stockman more closely resembled the pattern of a congressional office than of an executive institution. He used career staff as de facto research assistants rather than as skilled analysts, and was more interested in budget numbers than in program reviews. This perspective is said to have exacerbated the traditional differences between the BRD and the program divisions and ultimately to have favored the Budget Review Division in the organizational competition. 17/ The increasing visibility and versatility of the CBMS also serves to reflect positively on BRD.

Other units in the OMB organization coming under the Budget and Legislation rubric to mention in this brief overview of structures relevant to the budget process include Legislative Reference, Legislative Affairs, and the Legislative and Budget Support Group. The Legislative Reference Office has existed for a number of years and performs clearance functions not limited to budget issues. According to a description provided in OMB justification material for the fiscal 1983 appropriation hearing (the last time detailed OMB organzational material was submitted for the hearing record), the Legislative Reference Division

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15/ U.S. Congress. House. Committee on Appropriations. Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1985. Hearings before Subcommittee, 98th Cong., 2d Sess., Part 3, Executive Office of the President and Public Witnesses, April 5, 1984. Washington, U.S. Govt. Print. Off., 1984. p. 122.

16/ Heclo, p. 284.

17/ Ibid., pp. 279, 184.

> coordinates the review and analysis of Executive agency legislative proposals and agency reports including testimony on pending legislation; advises the agencies as to the relationship of their proposals and reports to the President's program; and clears such proposals and reports for transmittal to Congress. The Division informs congressional committees of the relationship of pending legislation to the President's program, participates in the development of the President's legislative program, and prepared memoranda to the President on enrolled bills. 18/

The Office of Legislative Affairs, similarly not serving the budget side exclusively, has become increasingly important in the years since 1974, as OMB involvement in the congresssional budget process has intensified. For over fifty years the budget agency had no formal liaison office for congressional relations; any incoming queries from Capitol Hill were handled by a staffer in the OMB (and BoB) Public Affairs Office. So an office "designed to deal specifically with the Congress and to help sell the President's budget on Capitol Hill is relatively new to OMB." An Office of Congressional Relations, with a staff of two, was created in 1973. 19/

The Congressional Relations staff tripled in size, from two to six, during the Carter Administration. According to former OMB Director James McIntyre, he enlarged the Hill liaison staff "not only to stop 'backdooring' by other Carter aides, but also to help the Appropriations and Budget committees restrain the authorizing committees, and to provide one voice for administration budget proposals." 20/

By June of 1981, under Director David Stockman, the staff had increased to eight and the liaison operation was renamed the Office of Legislative Affairs. Office staff provide an active OMB presence on the Hill, monitoring hearings and the like, and also serve as a clearinghouse for information requests from Congress. The Office also produces materials such as "The Legislative Highlight Report" which provides scheduling information on upcoming appropriations and

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18/ House Appropriation Hearings for FY 1983, p. 626. For further discussion of Legislative Reference, see below, Central Legislative Clearance, by Ronald Moe.

19/ Tomkin, Shelley Lynne. Office of Managment and Budget (OMB)-Congressional Relations During the Reagan Administration. Paper delivered at the 1985 Annual Meeting of the American Political Science Association, New Orleans, Aug. 29, 1985. p. 14.

20/ Davis, Joseph A. Budget Office Evolves into Key Policy Maker. Congressional Quarterly, v. 43, Sept. 14, 1985. p. 1813.

other relevant activity in Congress for circulation within OMB, and may prepare congressional testimony for the Director's use. 21/ Under Stockman a separate Legislative and Budget Support Group was also established. This Group, along with other developments relating to OMB-congressional relations, are discussed in a subsequent section of this report.

EXECUTIVE BUDGETING: TRADITIONAL PATTERNS AND RECENT CHANGES

The genesis of a national budgetary agency of course predates the establishment of OMB in 1970 and also the Bureau of the Budget in 1921. Before reviewing more recent developments, a brief historical overview of budgeting in the Federal Government in the period before 1921 seems useful. 22/

Article I, Section 9 of the Constitution provides that Federal funds are to be expended only "in consequence of appropriations made by law." Article II, which designates the President as Chief Executive and otherwise describes the Executive powers, does not refer directly to the spending power. Nor did the Constitution stipulate the organizational framework for the Treasury. 23/

The organic Act for the Department of Treasury was approved on September 2, 1789 (1 Stat. 65). Although Treasury was the third of the Executive departments to be established (following State and War), Congress afforded it special concern as reflected in the statute. According to the administrative historian, Leonard D. White, "Only in the Treasury Department did Congress work out the essential elements of internal organization." 24/ Another historian, Lloyd Short, suggested that the considerable detail of the legislative mandate for the fiscal bureaus of the Treasury contained in the

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21/ Tomkin, OMB . . . During the Reagan Administration, p. 15.

22/ The following discussion draws heavily from a previous CRS study: U.S. Library of Congress. Congressional Research Service. The Office of Management and Budget: Background, Responsibilities, and Recent Issues. Report No. 78-158 GOV, by Judith H. Parris. Washington, 1978. pp. 1-10.

23/ For an overview of the history of budgeting from the American Revolutionary period until 1921, see Fisher, Louis. Presidential Spending Power. Princeton, Princeton University Press, 1975. pp. 9-35.

24/ White, Leonard D. The Federalists: A Study in Administrative History. New York, Macmillan Company, 1948, p. 116.

1789 law resulted from congressional concern about the possible dangers of one-man rule and dishonest officers in charge of fiscal management. 25/

During most of the nineteenth century only modest changes occurred in the Treasury's system of financial management. The Executive budgeting process consisted of the annual preparation of estimates and expenditures by the departments and agencies. These figures were submitted to the Treasury, which compiled a "Book of Estimates" and forwarded it to Congress. There was no effort at central coordination so as to provide a comprehensive budget agenda proposal for consideration by Congress. In fact, the process was so decentralized that agency budgets were often formulated at the bureau level with little personal review by department head in determining the estimates submitted to Treasury. Most Secretaries of the Treasury did not attempt to undertake any systematic budget review, although Albert Gallatin in the Jefferson Administration was an exception. Only a few Presidents, such as Andrew Jackson and James K. Polk, took an active role in budget review. 26/

By the end of the nineteenth century advocates of more efficient government and scientific management began calling for a central Federal budgetary system with responsibility fixed in a single agency. The reform cause was strengthened by economic events when, beginning in 1904, the Federal Government experienced six straight years of budget deficits following 28 uninterrupted years of surpluses, which prompted Congress to begin investigations into the situation. Increased spending for pensions, public works, the Spanish-American War, and the Panama Canal contributed largely to the deficit. But the investigators also pointed to managerial inefficiencies. The Cockrell Committee (1887-1889) publicized certain antiquated administrative methods, such as hand-written rather than type-written records. The Cockrell-Dockery Commission (1893-1895) recommended new accounting practices for the Treasury, which were subsequently adopted. 27/

In 1905 President Theodore Roosevelt appointed a Commission on Department Methods (the Keep Commission) to investigate charges of inefficiency, waste, and corruption in the Federal Government. In particular, the Commission was to examine executive branch operations

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25/ Short, Lloyd Milton. The Development of National Administrative Organization in the United States. Urbana, Illinois, the Institute for Government Reserach, 1923, p. 160.

26/ Fisher, Presidential Spending Power, pp. 14-19.

27/ Ibid.

with concern for determining how the the Federal Government might conduct its business on the "most economical and effective basis in the light of the best modern business practices." 28/

The Keep Commission laid the groundwork for the next President, William Howard Taft, to appoint a congressionally authorized Commission on Economy and Efficiency in 1911. President Taft's commission came at a crucial time in budgetary history. The impetus for efficiency, particularly in fiscal matters, was strong and growing among the informed public. For example, a scholar observed that "with all their talent as money-getters, the American people have not applied to national finance the elementary principles upon which they insist in their private business." 29/ And a former Secretary of the Treasury lamented that an occupant of the position "is given authority to transmit to the Congress the yearly estimates of revenue and expenditure; but he is not authorized by existing law to reduce these estimates so as to make them conform to the receipts." 30/

In 1912 the Taft Commission submitted its report to Congress. Titled "The Need for a National Budget," the report described existing practices, considered various options, and set forth a model budget. 31/ President Taft endorsed the report's recommendation for a national budget, but was unsuccessful in his effort to be reelected. The report thus received little attention in Congress.

But the public interest in budget reform continued. Its proponents contended that the lack of coordination of estimates among Federal agencies resulted in waste of taxpayers' money. Some also noted that authority over expenditure decisions in Congress was likewise fragmented among various committees. The advocates of budget reform called for a new system with greater Presidential leadership and a central budget bureau to make the process more systematic and adept in the expenditure of funds. 32/

28/ Cited ibid., p. 28.

29/ Johnson, Allen. American Budget-making. Yale Review, v. 18, February 1910, p. 363.

30/ Cortelyou, George B. Regulation of the National Budget. The North American Review, v. 189, April 1909, p. 500.

31/ U.S. President's Commission on Economy and Efficiency. The Need for a National Budget. Washington, U.S. Govt. print. Off., 1912. 568 p.

32/ Morstein Marx, Fritz. The Bureau of the Budget: Its Evolution and Present Role, I. American Political Science Review, v. 39, August 1945. pp. 656-668.

The issue of establishing a national budget and creating a responsible support agency was inherited by Taft's successor as President, Woodrow Wilson. However, the Democratic Party platform in 1912 had endorsed budget reform through consolidation of appropriations into a single House committee rather than the executive budget approach. President Wilson adopted the congressional focus of the Democrats rather than the adoption of a national budget as supported by his predecessor.

Congress eventually became more interested in the subject of executive budget reform. A Select Committee on the Budget, created by the House in 1919, produced a report calling for a Bureau of the Budget directly responsible to the President. In 1920 Congress passed a bill creating such a bureau under the President's control but housed in the Treasury. By now President Wilson had joined in the call for a national budget, but he vetoed the 1920 bill on grounds that it contained an unconstitutional provision infringing upon the President's authority to remove officials.

On June 10, 1921, Congress passed the Budget and Accounting Act of 1921, 33/ which was signed into law by Wilson's successor, President Warren G. Harding. In addition to providing for a national budgetary system and creating the Bureau of the Budget, the 1921 law also established the General Accounting Office. Although features of executive budgeting in the Federal Government have changed over the years with the Bureau of the Budget becoming the Office of Management and Budget, the basic framework for the process still derives from the 1921 law. 34/

Federal budget documents refer to three main phases in the Federal budget process: executive formulation and transmittal, congresssional action, and budget execution and control. 35/ While the budget preparation stage has traditionally been a primary responsibility, OMB also has specific duties regarding budget execution, and in recent years has become increasingly involved in the congressional action phase as well (as detailed in the following sections on changing institutional relationships).

Budget Formulation. Although the formal framework for preparation of the Federal budget has remained relatively unchanged

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33/ The 1921 law was identical to the 1920 version except for the provision relating to the removal of the Comptroller General and his assistant. A joint resolution (to be signed by the President) was substituted for the previous concurrent resolution provision as the means for removal of the GAO officials.

34/ Public Law 67-13; 42 Stat. 20.

35/ U.S. Office of Management and Budget. Budget of the United States Government Fiscal Year 1986. Washington, U.S. Govt. Print. Off., 1985. p. 7-2.

since 1921, the process in operation has been subject to substantial alterations. 36/ Before turning to consideration of some recent developments, it is useful to review briefly the traditional cycle as a background against which to analyze the departures from the past.

The formal timetable for OMB budget preparation includes these steps. In March (about a year and a half before the October 1 beginning of the applicable fiscal year), OMB along with the Treasury Department and the Council of Economic Advisers reviews the economic outlook and makes tentative predictions of effects on revenues and spending. Following these reports and initial efforts by the President to establish spending priorities, OMB conducts a series of "spring planning reviews" to identify major funding or program issues likely to require further attention in the fall. OMB then decides upon overall guidelines for the agency budget submissions and forwards to the agencies directions for preparation of their budget estimates. 37/

In the summer the agencies prepare their proposed budgets, which are forwarded to OMB in September. The proposed estimates as developed by the agencies are then reviewed by OMB examiners, and hearings are held by OMB during which agency staff attempt to justify their proposals. Then comes the review by the OMB Director, agency by agency, of the budget request and the recommendation of the examiner, after which the Director decides upon his recommendation for the President.

Meanwhile, the economic advisers have reviewed and possibly revised their projections concerning spending and outlays for the coming year. These findings, along with the OMB Director's budget recommendations, are forwarded to the President. OMB also transmits recommended budget levels or "marks" back to the agencies.

In December the White House reviews OMB recommendations and makes final decisions on totals for agencies and programs. Agency heads may appeal OMB's decisions concerning their funding directly to the President at this point, but generally disagreements are resolved between OMB and the agency. OMB then prepares the budget documents, and in January the President sends to Congress his proposed budget for the coming fiscal year. 38/

36/ One important exception to this generalization was the adoption of the so-called unified Federal budget, pursuant to the recommendations contained in the report of the President's Commission on Budget Concepts in 1967.

37/ OMB Circular No. A-11, Preparation and Submission of Budget Estimates, contains the detailed instructions for the agencies.

38/ U.S. Office of Management and Budget. The Work of the Office of Management and Budget. Mimeographed report, dated May 1982, pp. 13-14.

In brief, the traditional pattern for budget formulation has been characterized by a bottom-up process within the executive branch. The Presidential budget was compiled "by filtering agency spending requests up toward the budget director and the president through a series of discussions, hearings, and reviews." 39/ BoB/OMB ". . . as master of the information flow, had no serious challenger for control of the budget process." 40/

In recent years, although the formal schedule for submission of budget documents and OMB decisions is still observed, the actual formulation process has become infinitely more complicated and unstable. Various factors have served to undercut the traditional process of executive budgeting, including the fragmentation and independence of congressional budgeting. The rise in uncontrollable and unbudgeted expenditures such as social insurance and income transfer payments mandated by statute also contributed to the demise of the traditional pattern as has the situation of unstable budgets, with "numerous midcourse jolts during each fiscal year," so that budgeting becomes a continuous rather than a cyclical process. 41/

Hugh Heclo has suggested that budget formulation became more complicated and contentious as the Federal budget came to serve varied functions; in addition to the most basic purpose of paying for Government operations, it has also become a device for setting national priorities, managing the economy, and distributing income. 42/

Obviously these developments affecting formulation did not emerge en masse in 1970. The undermining of traditional patterns of executive budgeting has been more gradual, but it is also true that the transformation of the budget preparation process within OMB has accelerated in the last decade.

Perhaps the most frequently noted development in recent years relating to budget preparation has been the move toward "top-down" budgeting, characterized by growing centralization of decision-making for the executive budget process within OMB and the person of its Director. This new pattern has supplemented rather than entirely replaced the traditional process described above. 43/

39/ Heclo, Executive Budget Making, p. 265.

40/ Schick, Allen. The Budget as an Instrument of Presidential Policy. In Salamon, Lester M., and Michael S. Lund, eds. The Reagan Presidency and the Governing of America. Washington, Urban Institute Press, 1984, p. 94.

41/ Ibid., pp. 99-100.

42/ Heclo, Executive Budget Making, pp. 256-258.

43/ Ibid., pp. 262-270.

In addition to former Director Stockman's preference for a top-down style of decision making, the recent emphasis on budget-cuts favor such procedures. While the pre-1981 pattern of incremental growth of Federal programs could be guided in a decentralized manner by the agency requests, ". . . budgets must be cut from the center, because budget cutting means weighing all the government's needs and programs." Former OMB Executive Associate Director for Budget, Donald Moran, has further suggested that the centralized, top-down budgeting actually involves the President, not the OMB Director, giving the directions to the agencies. According to this view, "Top-down budgeting would have come along, given the priorities and philosophy of this Administration, whether Stockman was around or not . . . ." 44/

However, Director Stockman's personal capabilities contributed greatly to the generally acknowledged success of the effort to formulate the budget in a more top-down fashion. As one appraisal noted:

> By all accounts Stockman's abilities as a budget director were outstanding. His knowledge of the technical detail (not to mention the accounting gimmicks) behind the budget numbers astounded seasoned OMB staffers. 45/

The development of the CBMS also facilitated the change to top-down direction of budget formulation by OMB. Before 1981 the OMB computer system had been geared to producing the President's annual budget submission with all its detail, but the system was not very useful for answering more analytical "what if" questions. With the CBMS it is now possible to answer hypothetical questions about ramificiations of proposed changes to the budget, as well as to view individual programs or various categories and their expansion or shrinkage over time. 46/

The increasing automation of the budget preparation process should be noted as a significant development distinct from the more widely publicized CBMS. Although the design of the CBMS and the widespread installation of computers in OMB occured under David Stockman, initial efforts to automate budget preparation date back to BoB days.

For example, in appropriations testimony in 1969, BoB officials explained in response to a question on the status of automating the budget process:

44/ Cited by Rauch, Jonathan. Stockman's Quiet Revolution at OMB May Leave Indelible Mark on Agency. National Journal, v. 17, May 25, 1985, p. 1214.

45/ Heclo, Executive Budget Making, p. 263.

46/ Rauch, Stockman's Quiet Revolution, p. 1215.

> We are trying to evolve from a basically manual system of budget preparation . . . to a machine system . . . . We have in effect put the basic budget data in computer form, so that it is manipulable and can be arrayed in the various ways required for preparation of the budget and the supporting tables.
>
> We are working now, and will be for years to come, on the further mechanization of the process 47/

A decade later, in 1980, OMB Director James McIntyre reported that the budget preparation process was "evolving and improving," but noted that "further automation of the entire budget review, printing and submission process is essential." 48/

Although a separate automated Budget Preparation System (BPS) was in place before the creation of the CBMS, the use of the CBMS for assisting in the prepartion stage (as well as for tracking congressional action and projecting alternatives, as described elsewhere) has contributed to the overall automation effort, which is continuing. For example, in the fiscal year 1986 budget for the first time some historical tables were generated by CBMS. The data for some four dozen historical tables for the period from 1940 to 1990 were transferred into the CBMS, to replace the previous reliance on word processors. The pages of the tables generated by CBMS were photographed and then published as part of the budget. And efforts to merge completely the data bases for the CBMS and the preexisting BPS are underway. 49/

Zero-Base Budgeting. A third factor to mention in the evolution of budget preparation since 1970 was much publicized attempt during the Carter Administration to incorporate the approach of zero-base budgeting (or ZBB) into the Federal budget process. ZBB constituted only the most recent of several efforts to adapt new styles in Federal budget preparation. Mosher has noted that each of these successive phases since the fifties represented

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47/ U.S. Congress. House. Committee on Appropriations. Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1970. Hearings before Subcommittee, 91st Cong., 1st Sess., Part 3, Executive Office of the President, April 17, 1969. Washington, U.S. Govt. Print. Off., 1969. p. 380.

48/ U.S. Congress. Senate. Committee on Appropriations. Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1981. Hearings before Subcommittee, 96th Cong., 2d Sess., April 23, 1980. Washington, U.S. Govt. Print. Off., 1980. p. 7.

49/ AABPA, Spring Symposium Proceedings Summarized, pp. 9-12.

a somewhat different perspective, procedure, and emphasis: the performance budget in the early fifties; the cost and accounting emphasis in the late fifties; planning-programming-budgeting systems (PPBS) in the sixties; management by objectives (MBO) in the early seventies; and zero-based budgeting (ZBB) in the late seventies. Federal budgeting has adapted to these to varying degrees and borrowed some pieces from each of them. 50/

The adoption of a performance budget was a major recommendation of the First Hoover Commission, and was incorporated as a requirement in the Budget and Accounting Procedures Act of 1950 (Public Law 81-784). The emphasis in performance budgeting, continued in PPBS and MBO as well as ZBB, was upon outputs of Government activities rather than the prices paid for the component inputs. As stated in the Commission Report in 1949, a performance budget was to

> analyze the work of government departments and agencies according to their major functions, activities, or projects. It would thus concentrate attention on the work to be done or services to be rendered rather than on things to be acquired such as personal services, contractual services, supplies, materials and equipment. 51/

The planning-programming-budgeting system (PPBS) of the mid-sixties emphasized program evaluation and analysis. A series of steps comprised its highly rationalistic framework: determine governmental objectives in a given area, think about alternative means (or programs) for achieving the objectives, compare the alternative programs in terms of cost effectiveness, choose the best program and incorporate it into the budget, implement the program, evaluate the results in terms of costs compared with benefits, and then begin the entire process again. Originally begun in the Department of Defense in 1961 when the Secretary brought in a group of microeconomists largely from the RAND Corporation, the PPBS approach was widely regarded as a useful procedure for relating military plans to the budget through program structures. However, in 1965 when President Johnson ordered that PPBS become installed throughout the Government, apparently there was ". . . quiet resistance to it as a new method of budgeting in BoB and in other agencies of the government." 52/

Although PPBS was dropped as a formal requirement for agency budget preparation by the Nixon Administration, the Defense Department continued to follow many of its precepts. PPBS also

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50/ Mosher, A Tale of Two Agencies, p. 99.

51/ Cited ibid., p. 72.

52/ Ibid., pp. 123-124.

provided an important legacy for OMB. While the performance budget had moved beyond the traditional concept of appropriations to pay for services and things by focusing on the activities and effectiveness of the services and things purchased, PPBS heightened concerns of program evaluation during budget formulation: "PPBS too, was concerned with outputs, but it went a step beyond [performance budgeting] to outcomes and effects and their relationship to costs." 53/ Zero-based budgeting (ZBB) as implemented during the Carter Administration was rather different from PPBS, although these two recent efforts at reform of budget formulation procedures are often compared. 54/

The direct antecedent of the ZBB approach as used by President Carter came from private industry. In 1968 Mr. Peter A. Pyhrr, after reviewing the budgetary problems in two divisions of Texas Instruments, developed the planning and budgetary methodology which he termed "zero-based budgeting." Pyhrr's article describing ZBB came to the attention of then Governor Carter, who decided to adopt the system in Georgia. 55/

During the 1976 presidential campaign Jimmy Carter frequently recounted the success of the ZBB approach in Georgia and stated his desire to institute ZBB at the Federal level as well. 56/ Following the Carter election victory, general public interest in the ZBB approach increased considerably. Mr. Pyhrr accommodated with another article in which he identified four key steps in the ZBB process:

— Identify "decision units."
-- Analyze each decision unit in a "decision package."
— Evaluate and rank all decision packages to develop the appropriate request.
— Prepare the detailed operating budgets reflecting those decision packages approved in the budget appropriation. 57/

53/ Ibid., p. 124.

54/ See Benda and Levine, elsewhere in this volume, for further discussion of PPBS, MBO, and other predecessors to ZBB.

55/ Pyhrr, Peter A. Zero-Case Budgeting: A Practical Management Tool for Evaluating Expenses. New York, John Wiley & Sons, 1973, p. xi.

56/ See, for example: Carter, Jimmy. The Presidential Campaign 1976. Washuington, U.S. Govt. Print. Off., 1978. [A compendium prepared at the request of the Committee on House Administration.] Volume one, pp. 60, 244, 435.

57/ Pyhrr, Peter A. The Zero-Base Approach to Government Budgeting. Public Administration Review, v. 37, Jan./Feb. 1977, p. 2.

Early in 1977, President Carter issued a memorandum for agency heads, instructing them to use the ZBB approach in preparation of the fiscal year 1979 budget. The President further indicated that the OMB Director would review the budget formulation process to determine how ZBB could be incorporated and would develop a plan "for applying the zero-base budgeting concept to preparation, analysis, and justification" of the budget estimates for the respective departments and agencies. 58/

The initial OMB bulletin on "Zero-Base Budgeting" was 25 pages long and was arranged under eight topics: purpose, coverage, definitions of terms, ZBB concept, anticipated benefits, the ZBB budgeting process, preparation of materials, and OMB review and consultation. 59/ The paperwork involved in implementing ZBB was presaged in the discussion about preparing supporting materials. For each decision unit, documentation was to include an overview consisting of identifying information, long-range goals, major objectives, alternatives and accomplishments. In addition, decision packages (about two pages in length) were required, covering identifying information, activity description, resource requirements, short term objectives, impact on major objectives; and finally, a ranking sheet was to be prepared.

In the summer and fall of 1977 Federal managers sought to implement the ZBB approach within their agencies and to produce the fiscal 1979 budget estimates and accompanying materials as instructed by OMB. To a considerable extent agency personnel were successful in producing the 1979 budget according to ZBB guidelines. But according to one assessment, this very rapidity in implementation reflected ZBB's superficiality in affecting a change in the "terminology of budgeting, but little more." ZBB could be incorporated quickly and with little resistance "because it did not alter either the 'rules of evidence' for budgeting or the structure for budget choices." The OMB guidelines allowed sufficient permissiveness regarding definitions of "decision units" so that budget officials could and did infer that "anything goes, provided that the agencies use the official nomenclature." 60/

Within OMB itself there was recognition of ZBB's limited impact on the budgetary practices of agencies in a review of the first year

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58/ U.S. President, 1977-1980 (Carter). Zero-Base Budgeting for the Fiscal Year 1970 Budget, Feb. 14, 1977. Weekly Compilation of Presidential Documents, v. 13, Feb. 21, 1977. p. 197.

59/ U.S. Office of Management and Budget. Zero-Base Budgeting. [Bulletin No. 77-9]. April 19, 1977. This was superceded by OMB Circular A-115, similarly titled, on May 5, 1978.

60/ Schick, Allen. The Road from ZBB. Public Administration Review, v. 38, March/April 1978, pp. 177-179.

when "it was impossible to cite specific instances where ZBB led to budget savings" while ZBB clearly had increased the paperwork burden. 61/ There was likewise little evidence after the first year that ZBB was having any significant impact at the macro level. Far from reflecting any major innovations, the budget for FY 1979 was "a virtual carbon copy of the budget that preceded it." 62/ Nor did major program cutbacks result from ZBB: "Virtually every function, subfunction, or major program [was] funded at or slightly above its previous service level." 63/

The three subsequent budgets prepared by the Carter Administration adhered to the ZBB approach as well. In his final budget message presented on January 15, 1981, President Carter noted with respect to the budget process that ZBB had become "an integral part of the decisionmaking system, providing a more systematic basis for making decisions. . . ." 64/

However, despite adaptations on the basis of experiences with ZBB from 1977-1980, problems apparently remained. In a 1980 speech delivered on the "Continuing Need for Budget Reform," Elmer Staats reflected upon the experience with ZBB, and suggested the need for further modifications in ZBB procedures in order to reduce the workload and allow more time for policy analysis and related tasks. According to the Comptroller General, "On the executive branch side, the installation of ZBB procedures has significantly increased paperwork, increased the amount of time spent on the mechanics of budget formulation, and reduced the time available for agency analysis and monitoring of budget execution." With respect to proposals for improvement, Staats suggested that selected ZBB reviews could be coordinated with a congresssional agenda for periodic oversight reviews and reauthorization of programs. 65/

61/ Dempsey, John R. Carter Reorganization: A Mid-term Appraisal. Public Administration Review, v. 39, January/February 1979. p. 76.

62/ Ibid.

63/ Schick, The Road from ZBB, p. 177.

64/ U.S. Budget of the United States Government. Fiscal Year 1982. Washington, U.S. Govt. Print. Off., 1981. p. M12.

65/ Staats, Elmer B. Continuing Need for Budget Reform. Speech delivered to the American Association for Budget and Program Analysis at George Washington University in November 1980. Reprinted in Bureaucrat, v. 10, Fall 1981, p. 24.

The views expressed in this speech reflected some of the findings reported in a 1979 GAO study. 66/

Another assessment of ZBB in practice concluded that ZBB at the Federal level rarely entailed actual zero-base reviews but rather the "systematic and formalized arraying of various funding levels for decision units." For the most part, minimum funding levels were set not at zero, but at some arbitrarily designated percentage (the most common being 85 percent) of the current funding level. 67/

According to this interpretation ZBB did not represent a radical change in the process of budget formulation, but rather a continuation of incremental analysis by focusing on the marginal utility of additional dollars for particular programs. Thus, unlike its predecessor PPBS, ZBB "changed very little of the substantive way budgets are put together." PPBS attempted to change the program structure underlying the budget, whereas OMB left the definition of the "decision units" for ZBB at the discretion of the agencies: organizational entities, functions or activities, or even program categories. 68/

On August 7, 1981, OMB rescinded its Circular 115 mandating ZBB. Attention was directed to another circular for future guidance concerning budget justification requirements and the preparation and submission of agency budget requests. OMB Director David Stockman concluded the memorandum by stressing the continuing need for program evaluation as a part of the budget review process: "Agencies are expected to continue to install, and/or improve evaluation methods and productivity measurements, as well as seek other ways to demonstrate the effectiveness, efficiency, and continued need for programs as they conduct internal budget reviews. 69/

The authors of the 1981 study cited already suggested that the future of ZBB at various governmental levels would be dependent upon a number of factors, including what might be proposed as an

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66/ U.S. General Accounting Office. Streamlining Zero-base Budgeting Will Benefit Decisionmaking; Report to the Congress by the Comptroller General of the United States. PAD-79-45, Sept. 25, 1979. Washington, 1979. 79 p.

67/ Draper, Frank D., and Bernard T. Pitsvada. ZBB — Looking Back After Ten Years. Public Administration Review, v. 41, Jan./Feb. 1981. pp. 78.

68/ Ibid., pp. 78-79.

69/ U.S. Office of Management and Budget. Memorandum from Director David Stockman to the Heads of Executive Departments and Establishments, Concerning Rescission of Office of Mangement and Budget Circular No. A-115, Zero-Base Budgeting. Aug. 7, 1981.

alternative. At the Federal level the Reagan Administration chose to terminate ZBB procedures, but did not select any new reform format to replace it. So although formal requirements ceased for Federal agencies to prepare profiles of alternative funding levels and then rank them during the process of budget formulation, certain procedures from the ZBB legacy may continue to influence budget preparation. Long after the formal requirements for PPBS terminated, the Department of Defense retained features from PPBS in the budget formulation process. 70/

Budget Execution. OMB also plays a central role in the execution phase of the budget process. Following congressional action, the budget becomes the financial plan for the operations of the Federal Government during the coming year. Budget execution entails implementation of an agency's budget and the actual obligating of the funds as provided for in the appropriations laws.

Budget authority is made available to the respective agencies through the apportionment system, which is intended to provide for an orderly and efficient use of funds and to reduce the need for supplemental appropriations. Under existing law, the Director of OMB must apportion or allocate the funds appropriated for an agency, often by quarters of the fiscal year, or by function, activities, projects, or objects. 71/

This distribution of the budgeted amounts to the agencies by OMB during apportionment is prerequisite to making the funds in the respective appropriation accounts, which are administered by the Treasury Department, available for obligation. The agency in turn allots the funds apportioned to it among its branches. Such allotment within the agency constitutes a delegation of authority to agency employees allowing them to incur obligations within a specified amount. 72/

70/ Draper and Pitsvada, ZBB, pp. 80-82.

71/ The apportionment process dates back to the Antideficiency Act of 1905, as amended, which required monthly or other allotments to "prevent undue expenditure in one portion of the year that may require deficiency or additional appropriations to complete the services of the fiscal year for which said appropriations are made." For many years agency heads were responsible for administering apportionments.

72/ U.S. General Accounting Office. Office of General Counsel. Principles of Federal Appropriations Law. Washington, U.S. Govt. Print. Off., 1982. p. 2-17.
This discussion emphasizes the distinctions in terminology: Congress appropriates, OMB apportions, and the receiving agency allots.

The original rationale of the apportionment system was to prevent agencies from running out of funds before the end of the year. However, a new function--to affect savings--was added to the process by means of a BoB administrative circular issued in 1921. In an effort to extend greater control over agency spending levels, the Budget Director issued instructions to the agencies about procedures relating to apportionment. Henceforth the agencies were to consider their appropriation level as a ceiling, rather than as a spending directive. Each agency was to estimate an indispensible level of funding to carry out its activities; following review by the Bureau and approval by the President, the remainder of the appropriation, or estimated savings, was to be designated as a "General Reserve." 73/

It was not until 1933, however, with Executive Order 6166 issued pursuant to the Economy Act of 1933, that authority for "making, waiving, and modifying apportionments of appropriations" was granted to the Budget Director; previously agency heads had this responsibility. The practice of creating reserves in conjunction with the apportionment process received a statutory basis through an amendment to the Antideficiency Act in 1950, which authorized the President to establish budgetary reserves "to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements, greater efficiency of operations, or other developments subsequent to the date on which such appropriation was made available." (64 Stat. 765).

The placing of funds in such budgetary reserves amounts to a type of routine impoundment action to accomplish management efficiencies. Through its role in the apportionment process BoB/OMB had thus been involved with impoundment of funds resulting from budgetary reserves for many years. Impoundment issues constituted a major source of controversy in OMB-Congressional relations in the early 1970s, culminating in the passage of the Impoundment Control Act of 1974, (Title X of the Congressional Budget and Impoundment Control Act), as described in the following section.

CHANGING RELATIONS BETWEEN OMB AND CONGRESS, 1970-1980

In the period since 1970 significant changes have occurred in the Federal budget process with respect to the relationship between OMB and Congress. The Congressional Budget and Impoundment Control Act of 1974 has been a major factor influencing this evolution of legislative-executive relations. Since 1974 OMB has become much more involved with the congressional stage of budget deliberations, preceding the enactment of appropriations laws. But at the same time participation by Congress in the budget formulation and execution stages has increased.

73/ Fisher, Presidential Spending Power, pp. 38-40.

It should be noted that there were changes in external circumstances in the 1970s which exerted a profound influence on the budget process and the environment in which the OMB-congressional relationship has evolved: "Economic growth was slower, budget outlays grew in real terms, inflation worsened, and the budget as a proportion of the gross national product grew." 74/ While an analysis of such factors lies beyond the scope of this study, it is necessary to keep in mind that the developments described below were occuring within the context of these economic trends.

Congressional Oversight of Impoundment. An impoundment is any "action or inaction by the executive branch that withholds or delays the obligation or expenditure of budget authority provided by Congress." 75/ As discussed above, the creation of budgetary reserves as a part of the apportionment process as operated by OMB constitutes a type of impoundment which has had a statutory basis since 1950.

Although virtually all Presidents have impounded funds in a routine manner as an exercise of executive discretion, so-called "policy impoundments," where a President might seek to terminate or curtail a program because he opposes it, have been less frequent. President Franklin Roosevelt first used policy impoundments on a large scale during World War II by curtailing public works spending in order to make additional resources available for the war effort. 76/

In the 1950s and 1960s there were impoundment disputes resulting from the refusal of successive Administrations to fund certain weapons systems to the full extent authorized by Congress. These confrontations between the President and Congress revolved around the constitutional role of Commander-in-Chief and tended to focus on relatively narrow issues of weapons procurement. President Johnson made broader use of his power to impound by ordering the deferral of billions of dollars of spending during the Vietnam War in an effort to restrain inflationary pressures in the economy. In general, such policy impoundments before the time of President Nixon involved temporary spending delays, with the President acting in consultation

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74/ Mathiasen, David G. Recent Developments in the Composition and the Formulation of the United States Federal Budget. Public Budgeting and Finance, v. 3, Autumn 1983. p. 103.

75/ U.S. Library of Congress. Congressional Research Service. Manual on the Federal Budget Process. Report No. 83-26 GOV, by Allen Schick (consultant) and Robert Keith. Washington, 1982, p. 104.

76/ For an historical overview of the uses of impoundment, see Fisher, Presidential Spending Power, pp. 147-174.

with congressional leaders, so that a protracted confrontation between the branches was avoided. 77/

Conflicts over the use of the impoundment power greatly increased during the Nixon Administration. One study of this topic suggested that impoundment actions by President Nixon differed from those of previous presidents in five ways. The Nixon Administration impounded larger amounts, disregarded explicit expressions of intent by Congress that the funds be spent, attempted to terminate entire programs rather than merely particular projects, systematically withheld funds from programs that were not included in the original President's budget, and claimed broad constitutional power for Presidential impoundment. 78/

The role of OMB in administering the apportionment process became part of the dispute with regard to impoundment powers. For example, in 1973 OMB Director Roy Ash explained his interpretation of the 1950 statutory provisions regarding reserves to the effect that inflationary pressures could be considered under "other developments" and therefore provided a justification for placing funds in reserve. The legislative history of the 1950 law failed to support Director Ash's position, however. 79/

As the confrontation over President Nixon's claims of impoundment authority and OMB's role in establishing reserves intensified during the 92nd and 93rd Congresses, the Judiciary became involved as well as the executive and legislative branches. During this period President Nixon increasingly sought to reorder national priorities from the course chosen by Congress in appropriation laws by means of impoundment actions. 80/

For example, in the spring of 1971 OMB announced that it was withholding some $12 billion, mainly from highway funds and various urban programs. The action was confirmed during congressional testimony in 1971, when Secretary of Housing and Urban Development George Romney explicitly announced that funds were being withheld from various urban programs including water and sewer grants, open space grants, and public facility loans in anticipation of enactment of the President's revenue sharing proposal. As noted already, such

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77/ Fisher, Louis. The Politics of Impounded Funds. Administrative Science Quarterly, vol. 15, 1970. p. 361.

78/ Pfiffner, James P. The President, the Budget, and Congress: Impoundment and the 1974 Budget Act. Boulder, Westview Press, 1979. pp. 40-44.

79/ Fisher, Presidential Spending Power, pp. 154-55.

80/ For detailed case studies of impoundments under President Nixon, see ibid., pp. 175-197.

prospective action, with the Administration withholding money in anticipation of congresional approval of a replacement program, represented a new application of the impoundment tool: "It gave precedence to an Administration recommendation, not yet enacted, over a public law already on the books and funded by Congress." In 1974 a District Court held that the HUD Secretary had no statutory authority to suspend an entire program, and a few weeks later Congress substituted bloc grants for categorical programs by enacting the Housing and Community Development Act of 1974. 81/

Perhaps the most famous of the Nixon impoundments involved the Clean Water Act funds. The Federal Water Pollution Control Act Amendments of 1972 were enacted by means of congressional override of the President's veto. Undeterred, President Nixon proceeded to impound half of the $18 billion provided for the intensive three-year program by instructing the head of the Environmental Protection Agency to withhold allotments from the States amounting to $3 billion each in fiscal years 1973, 1974, and 1975. Eventually court challenges reached the Supreme Court, which held that the Clean Water Act required full allotment. 82/

During these impoundment conflicts of the Nixon years, Congress responded with ad hoc efforts to restore individual programs as well as with gradually more restrictive appropriations language. Congress also attempted to obtain from OMB more complete information on funds being placed in budgetary reserves and thus withheld from apportionment. Although under the Reorganization Act of 1970 the OMB Director is required to make available to Congress or to its committees upon request data regarding program activities and expenditure receipts of agencies, initial experiences in using this provision were less than satisfactory from the perspective of many in Congress. Consequently, the Federal Impoundment and Information Act, stipulating in greater detail the information required by Congress, was enacted on October 27, 1972, in the form of an amendment to a law increasing the public debt ceiling. 83/

81/ Fisher, Presidential Spending Power, pp. 192-193.

82/ Ibid., pp. 184-192.

83/ Public Law 92-599, 86 Stat. 1325. Prior to the 1970s accurate and systematic data concerning impoundments were not readily available. For example, in 1968 the Senate Subcommittee on the Separation of Powers under the late Senator Sam Ervin requested a complete listing of impoundment actions since 1945 from BoB, but received only a listing of selected examples. See Church, Frank. Impoundment of Appropriated Funds: The Decline of Congresssional Control Over Executive Discretion. Stanford Law Review, vol. 22, June 1970. p. 1243.

This 1972 Act required that the President "promptly transmit" a report to Congress and to the Comptroller General whenever any funds were appropriated and then partially or completely impounded. In addition to basic data on identity, amount, and date of each impoundment action, the report was to state the reasons for the impoundment and "to the maximum extent practicable, the estimated fiscal, economic, and budgetary impact" of the action.

Initial cricitism of the Administration concerned delay in reporting. As of January 1973, there had been no effort to comply with the reporting requirements, nor was there any indication as to when reports might be transmitted. Responding to the delay, Congress adopted a deadline of February 10, 1973, for an initial report from OMB pursuant to the law. 84/

OMB issued the first report to comply with the 1972 law on February 6, 1973. 85/ The late Senator Hubert H. Humphrey, author of the impoundment information amendment, termed the report "unacceptable." The most striking aspect of the report in his opinion was its incompleteness: "full reasons for fund impoundment are not specified, and little information is given as to when the Congress and the public can expect the funds to be released." Despite taking four months to transmit the report, according to Sen. Humphrey, "the final product of OMB's efforts looks like the report was put together in less than a week's time." 86/

On March 8, 1973, Congress passed legislation requiring quarterly impoundment reports. 87/ Meanwhile, many other bills dealing with the impoundment problem were introduced during the 93rd Congress. Both the House and Senate passed impoundment control bills, but the conference remained in impasse. The House supported a version giving Congress sixty days in which to review and possibly disapprove by one-house veto an impoundment, while the Senate-passed bill approved a stronger oversight mechanism, requiring congressional approval of a proposed impoundment within sixty days. This impasse was broken during conference action on the budget reform legislation (discussed

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84/ Public Law 93-1, 87 Stat. 3 (Jaunary 19, 1973).

85/ Office of Management and Budget. Report Under Federal Impoundment and Information Act. Federal Register, vol. 38, Feb. 6, 1973. pp. 3474-3496.

86/ Humphrey, Hubert H. The President's Impoundment Message is Unacceptable. 119 Cong. Rec. 4100 (Feb. 8, 1973).

87/ Public Law 93-9, 87 Stat. 7.

below), when it was decided to add a separate title dealing with impoundment. 88/

The Impoundment Control Act, which is Title X of the Congressional Budget and Impoundment Control Act of 1974, became effective upon signing of the law on July 12, 1974 (Public Law 93-344, 88 Stat. 332). The law curtailed the authority of the President to accumulate budgetary reserves. The language of the 1950 amendment to the Antideficiency Act was tightened by deleting the "other developments" rationale for the creation of reserves in an effort to restrict impoundment actions under that authority.

The difference in approaches of the House and Senate toward impoundment control was reconciled by designating two categories of impoundments-rescissions and deferrals -- and establishing different procedures for congressional review and control of the respective types. A rescission involves permanent cancellation of the funds in question, while a deferral entails a short-term postponement:

> When the President does not anticipate any current or prospective need for funds, or when withheld funds would lapse before they are scheduled for release, he must ask Congress to rescind the appropriation. Deferrals are to be proposed when the President anticipates further but not current need for the funds. 89/

Title X repealed the Federal Impoundment and Reporting Act and established broadened reporting requirements. Sections 1012 and 1013 required the President to inform Congress in a special message of any proposed rescissions and deferrals and also to submit certain information regarding each such action, including the amount to be withheld, the accounts and programs involved, the estimated fiscal and program effects, the reasons for the impoundment, and with respect to a deferral the period of time proposed for withholding the funds. In the case of a rescission the funds must be released unless within 45 days of continuous session both Houses of Congress pass a bill approving the rescission. On the other hand, the 1974 law allowed deferrals to continue as long as proposed unless either the House or the Senate disapproved them by an impoundment resolution.

The 1983 Supreme Court decision in the INS v. Chadha case, which held the legislative veto to be unconsitutional, likely invalidates the one-House veto of deferrals. However, the impact upon the

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88/ U.S. Library of Congress. Congressional Research Service. The Impoundment Control Act of 1974: Legislative History and Implementation. Report No. 76-45 S, by Allen Schick. February 27, 1976. pp. 5-7.

89/ Schick, Allen. Congress and Money. Washington, The Urban Institute, 1980, p. 401.

Impoundment Control Act has not been very noticeable, since Congress had previously adopted the practice of rejecting deferrals through language in appropriation bills (subject to the full legislative process), rather than by one-house impoundment resolutions. 90/

Certain reporting duties assigned to the President pursuant to Sec. 1014 of the Impoundment Control Act were delegated to the OMB Director via Executive Order 11845 of March 24, 1975. Specifically, President Ford conferred upon the OMB Director the functions of transmitting copies of the special rescission and deferral messages to the Comptroller General and to the Office of the Federal Register, and also the responsibility of submitting to the Congress the monthly cumulative reports of proposed rescissions, reservations, and deferrals of budget authority. 91/

The Impoundment Control Act has not eliminated all conflicts over spending discretion by the President, but the procedural framework established by the law has generally been followed, consisting of Presidential recommendations and reports (prepared by OMB), review by the Comptroller General, and action (or as has generally been the case, acquiescence) by Congress. Each stage of the process generates considerable paperwork, most of which is required by law. During the first decade under the act more than 1,500 proposed rescissions and deferrals were transmitted to the Congress, with several individual requests usually combined in each message from the President.

However, there have been some areas of concern relating to operation of the law. The General Accounting Office conducted a review of implementation experiences during the first two years under the act and suggested several recommendations for administrative actions by OMB to improve the timeliness and content of the reports submitted to Congress. 92/ GAO also called for legislation to repeal the requirement to report routine impoundments in the form of budgetary reserves, suggesting that the "current requirement to report these impoundments produces little congressional reaction and

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90/ Fisher, Louis. Chadha's Impact on the Budget Process. Congressional Reserach Service Review, Special Issue, Fall 1983. p. 12.

91/ U.S. President, 1974-1976 (Ford). Executive Order 11845. Delegating Certain Reporting Functions to the Director of the Office of Management and Budget. March 24, 1975. Weekly Compilation of Presidential Documents, v. 11, March 31, 1975. p. 304.

92/ U.S. General Accounting Office. Review of the Impoundment Control Act of 1974 After 2 Years. Comptroller General's Report to the Congress. OGC-77-20. Washington, 1977. 20 p.

greatly increases paperwork and administrative burdens on the executive branch, the Congress, and the GAO." 93/ Other legislative recommendations from GAO included changing the "45-day period of continuous session" for consideration of proposed rescissions to a more predictable 60 calendar day period. None of these legislative changes were enacted, however.

With the resurgence of impoundment actions in the first two years of the Reagan Administration, congressional discontent, especially with adherence to the reporting requirements of the 1974 act, likewise increased. On March 29, 1982, a Task Force of the House Budget Committere held an oversight hearing on impoundment control. In an appendix to the hearing record, three general problem areas in the administration of Title X were identified: delays in reporting of impoundment, nonreporting of actual withholdings, and misclassification of impoundments. 94/

But there have also been efforts in Congress to enhance the rescission authority of the President. The usual approach of such bills is to reverse the burden of legislative action provided by the 1974 law, so that the rescission goes into effect unless a disapproval measure is enacted, Examples of this approach in the 98th Congress included H.R. 5000 (Michel) and an amendment offered by Senators Armstrong and Long to H.J. Res. 308 (a public debt limit extension) on November 16, 1983.

OMB and the Congressional Budget Process

The traditional role of Congress in the annual budget process has centered on the enactment of appropriations laws, along with necessary action on authorizing legislation and tax measures. Following the release of the President's budget in January, various congressional committees held hearings and reported bills addressing particular portions of the budget. Then came floor action to authorize or appropriate funding for certain programs or to provide tax relief or raise revenues.

93/ U.S. Congress. House. Committee on the Budget. Task Force on Budget Process. Oversight Hearing on the Impoundment Control Act of 1974. Hearing, 95th Cong., 2d Sess., June 29, 1978. Washington, U.S. Govt. Print. Off., 1978. pp. 7-8.

94/ U.S. Congress. House. Committee on the Budget. Task Force on Enforcement, Credit, and Multiyear Budgeting. Oversight of the Impoundment Control Process. Hearing, 97th Cong., 2d Sess., March 29, 1982. Washington, U.S. Govt. Print. Off., 1982. Appendix B, p. 194.

Eventually the specifics of the Federal budget for the coming fiscal year took form from these piecemeal actions. The final figures enacted often differed from those initially requested by the President, but throughout the process the President and OMB played a major role; an especially important source of executive control was the virtual monopoly over the information and data needed for the congressional deliberations. This system, in effect from 1921 until 1974, according to Allen Schick, was

> untidy, complex, cumbersome, and sometimes apparently irrational, but it worked, primarily because acceptable and necessary conflict-resolving processes were built into the process by statute, tradition, and understandings among the many participants. 95/

As the traditional mechanisms underlying the congressional phase of the budget process proved increasingly ineffective, a period of protracted conflict ensued from 1966 to 1973, which Schick has labeled the "Seven-Year Budget War." The outcome of the conflict was the Congressional Budget and Impoundment Control Act of 1974, which might be viewed as a treaty designed to reestablish an equilibrium in the annual budget cycle "by redefining power relationships among the old participants and creating new participants to develop better information and to control and channel the inevitable budgetary conflicts." 96/

The circumstances preceding the passage of the Congressional Budget and Impoundment Control Act of 1974 invite comparison with the events surrounding enactment of the Budget and Accounting Act in 1921. "Both were preceded by wars, economic and budget crises, and study committees and commissions." But the 1974 act involved a constitutional crisis as well over President Nixon's impoundment of funds, which was not evident in the history of the 1921 law. 97/

Another writer called attention to the virtually universal support for budget reform in Congress in the 1970s and offered further comparison between the 1921 and 1974 outcomes:

> Liberals wanted to counter President Nixon's impoundments of funds for social programs. And conservatives, including President Nixon, wanted Congress to discipline itself and cut spending. Thus those supporting the 1974 Budget Act

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95/ Schick, Congress and Money, p. 12.

96/ Schick, Congress and Money, p. 13.

97/ Shuman, Howard E. Politics and the Budget: The Struggle between the President and the Congress. Englewood Cliffs, NJ, Prentice Hall, 1984. p. 183.

resembled the coalition of reformers and fiscal conservatives who passed the Budget and Accounting Act of 1921. That Act, however, was intended to give greater budgetary power to the president. The 1974 Act was intended to limit that spending power, which had increased so greatly in the intervening half century. 98/

The discussion of impoundment above reviewed provisions of Title X of the 1974 law. As noted already, the Impoundment Control Act (Title X) and the Congressional Budget Act (Titles I-IX) developed as separate bills and were not combined into a single piece of legislation until conference. The 1974 law also established a congressional budget process highlighted by two concurrent budget resolutions (Title III). 99/

The first budget resolution, to be adopted by May 15, established targets to guide Congress during consideration of subsequent spending and revenue legislation. The second budget resolution, which was supposed to be adopted by September 15, set a binding floor on total revenues and a ceiling on total new budget authority and new outlays for the coming fiscal year, but Congress could revise the figures later in the fiscal year simply by adopting another budget resolution. In addition to provisions specifying fiscal policy--total revenues, budget authority, outlays, deficit, and public debt limit--another section of the budget resolution allocated new budget authority and outlays among 19 budget functions, or spending categories, such as health and energy. The timetable in the 1974 law envisioned the passage of a reconciliation bill after adoption of the second budget resolution, when it might be necessary to amend existing spending, revenue, or debt statutes in order to conform with the congressional budget as approved in the second budget resolution. As detailed below, a rather different sequence for the reconciliation process has evolved in practice.

A considerable body of literature has developed seeking to provide analysis of the operation and evolution of the congressional

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98/ Pfiffner, James P. The President, the Budget, and Congress: Impoundment and the 1974 Budget Act. Boulder, CO, Westview Press, 1979. p. 131.

99/ The Balanced Budget and Emergency Deficit Reduction Act of 1985 (Public Law 99-177) contained amendments to the 1974 law, including provision for a single congressional budget resolution each year, along with other changes in schedule. See discussion in final section below of this measure commonly referred to as Gramm-Rudman-Hollings. The original provisions of the congressional budget process are of interest here, because they established the framework within which relations between OMB and Congress evolved during the last decade.

budget process since 1974. 100/ Interesting as such discussion may be, our focus in this study centers on the impact of the 1974 law on the evolving institutional relationships between OMB and the Congress. Two provisions of the 1974 law, aside from the framework of the budget resolutions, are of of particular interest in this regard: the creation of the House and Senate Budget Committees and of the Congressional Budget Office (CBO).

Title I of the 1974 Congressional Budget Act provided for the creation of two new Budget Committees, with major reponsibilities for facilitating the operation of the congressional budget process. From the perspective of OMB, the establishment of the House and Senate Budget Committees provided a permanent congressional liaison for the Executive Branch in the budget area. As one writer explains:

> In much the same way that the Veterans Administration is the chief agency client of the veterans committees, the OMB became a client of the budget committees. The goals of the OMB and the budget committees converged, and staff-to-staff contacts developed. 101/

Title II of the 1974 Budget Act established the Congressional Budget Office as a new support agency for the legislative branch. As Allen Schick has recounted, the provisions regarding CBO emerged from compromise and of necessity contained ambiguities. Although there was widespread agreement on the need for a budget staff for Congress, there was no such unanimity on issues such as structure and purpose of the new agency:

> During the years of budgetary warfare [in the decade preceding 1974], Congress had perceived itself at a great disadvantage in challenging the executive branch. The President had his own Office of Management and Budget (OMB), along with legions of budget experts and policy analysts in executive agencies. All versions of congressional budget reform, therefore, called for a new staff, but differences emerged over the type of unit that should be established, whom it should work for, and the functions it should perform. Although most justifications for the budget staff pointed to mismatches between executive and legislative information

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100/ See, for example, Schick, Congress and Money. Also, The Congressional Budget Process after Five Years. Rudolph G. Penner (ed.). Washington, American Enterprise Institute, 1981; and Congressional Budgeting: Politics, Process, and Power. W. Thomas Wander, F. Ted Herbert, and Gary W. Copeland (eds.). Baltimore, The Johns Hopkins University Press, 1984.

101/ Johnson, Bruce E. From Analyst to Negotiator: The OMB's New Role. Journal of Policy Analysis and Management, v. 3, No. 4 (1984), p. 504.

and resources, Members of Congress were concerned as much about the distribution of power within Congress as with the relationship between the two branches. 102/

The statutory functions assigned to CBO fell into three categories: budgetary assistance, economic analysis, and policy analysis. With regard to the budgetary function:

> The strictly budgetary activities prescribed by the Act include cost estimates on pending legislation, scorekeeping reports, and five-year budget projections. CBO is charged to produce an annual report 'with respect to fiscal policy . . . taking into account projected economic factors.' 103/

Despite some initial differences of opinion within Congress about the appropriate course for CBO, the agency rather quickly developed a considerable degree of institutional maturity in fulfilling its statutory responsibilities, under the guidance of its first Director, Dr. Alice Rivlin. A House report in 1977 noted that CBO "established itself as a full-fledged, competent, and respected member of the congressional support family." 104/ In a book published in 1980, Schick offered this assessment of CBO:

> On the numbers side, CBO is performing with increasing competence and confidence. Its cost estimates cover most spending legislation, and the committees of jurisdiction accept the CBO role as legitimate and the numbers as reliable . . . .
>
> CBO's scorekeeping activities also have become technically proficient and accepted . . . . CBO's outlay estimates generally have proved more accurate than have those of the executive branch (in part, because they are published later) and its economic forecasts have tended to be closer to the mark. 105/

From the perspective of OMB, one writer has suggested that CBO has become "yet another window through which OMB can observe the Hill." It is understandable that staff contacts beween OMB and CBO have developed in the last decade. Moreover, "far from becoming adversaries, the CBO and OMB have displayed very similar

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102/ Schick, Congress and Money, p. 131.

103/ Ibid., p. 132.

104/ Cited in ibid., p. 165.

105/ Ibid., p. 164-165.

institutional perspectives on the federal budget process, and have often used similar approaches in evaluating various federal programs." 106/ This is not to suggest that institutional rivalries are absent, accentuated perhaps by the recent emphasis on the "selling of the President's budget by OMB." The consequence of this situation, as characterized by Heclo, is that "Today it is more the Congressional Budget Office than OMB which is seen as a more or less objective purveyor of non-partisan numbers and analyses." 107/

With the creation of the CBO and of the Budget Committees, Congress gained expanded and independent sources of information with which to overcome the previous imbalance that existed with the executive branch, and the institutional capacity for the legislative branch to challenge OMB's role as undisputed purveyor of budget data. But OMB also has attempted to adapt to the new congressional budget process by actions such as translating executive budget data into categories corresponding to the 19 budget functions mandated by the Budget Act. Converting the President's budget into the functional categories has facilitated greatly OMB monitoring of committee action in comparison with the President's original request. 108/

Heclo has suggested that the "broader congressional orientation in executive budgeting" constitutes one of two major changes in the recent budget process from the executive branch perspective (the other major charge being the greater centralization of top-down budgeting, examined above). 109/ Although the involvement of OMB in the congressional budget process perhaps peaked in the first year of the Reagan Administration (as considered below), the trend began to emerge a few years earlier in the immediate aftermath of the 1974 law. According to one study,

> The move toward greater OMB involvement in the Congressional phase of the budgetary process was not an entirely new development presented to OMB by David Stockman. It instead can be characterized as the expansion of a trend that already had taken root in OMB and had been advanced by budget directors under Ford and Carter. 110/

106/ Johnson, From Analyst to Negotiator, p. 504.

107/ Heclo, Executive Budget Making, p. 290.

108/ Johnson, From Analyst to Negotiator, p. 507.

109/ Heclo, Executive Budget Making, p. 256.

110/ Tomkin, OMB . . . During the Reagan Administration, pp. 3-4.

During the Ford Administration OMB Director James Lynn attempted to focus more attention on "how the spending agencies presented and result of this effort was the preparation of an advocacy document to defended the presidential budget on Capitol Hill." The most tangible accompany the President's budget submission (titled "Seventy Issues for FY 1977"), which sought "to focus congressional and public attention on the president's issues." 111/

Omnibus legislation such as continuing resolutions, supplementals, and debt ceiling extensions had existed for years, and such actions created opportunities for OMB involvement with Congress. But beginning with the Carter Administration the frequency and importance of such legislation increased. Along with budget resolutions, these omnibus bills provided the "basis for an expanded OMB role in the congressional budget process." 112/

The crucial turning point in OMB-congressional relations regarding the budget process, according to several writers, came in the the last year of the Carter Administration. For example, a high-ranking career official at OMB has observed:

> Two changes in the American budget process that would be of great significance occurred a year before the Reagan administration took office. These were the use of the reconciliation process to change basic spending legislation, and advanced consultation between the leadership of the legislative and executive branches of the federal government. 113/

Before turning to the events of 1980, it is necessary to consider briefly the evolution of the reconciliation process. As provided for in Section 310 of the 1974 Congressional Budget Act, reconciliation was to occur in conjunction with the second budget resolution, with a mandate that the Budget Committees direct the committees of jurisdiction to report legislation needed to comply with the provisions of the budget resolution. The Budget Committees then were to combine the proposed changes (without further modification) into a single reconciliation bill. In other words, the two-stage reconciliation process was to bring existing statutes into conformity with the budget decisions as adopted in the second budget resolution.

111/ Heclo, Executive Budget Making, p. 272.

112/ Johnson, From Analyst to Negotiator, p. 502.

113/ Mathiasen, David G. Recent Developments in the Composition and the Formulation of the United States Federal Budget, p. 106.

As originally envisioned, reconciliation was intended to address legislative decisions that might have been taken between the first and second budget resolutions, so as to ensure consistency. But there were at least two problems with this timing for reconciliation. By coming so close to the start of the new fiscal year (the second budget resolution was due by September 15, with reconciliation to be completed by September 25), there was insufficient time for Congress to legislate the necessary changes, and as a result inconsistencies between substantive legislation and policy assumptions as expressed in the budget resolutions were largely ignored. Thus, during the first five years under the Budget Act "few of the savings sought by the Budget Committees were enacted into law." In 1979 only about $200 million of the almost $6 billion assumed for savings was realized, and "Congress was compelled to accommodate additional spending in a third resolution for fiscal year 1980." 114/

Beginning with fiscal 1981, by including reconciliation instructions in the first budget resolution the Budget Committees, at least for a few years, were able to establish deadlines for the development of legislation by the various committees and to bring about action on the reconciliation bill containing a consolidation of all the statutory changes necessary to achieve the desired budget reductions. The new timing for the reconciliation process not only had a significant impact on the congressional budget process; it also had profound effects on relations between Congress and OMB.

As noted already, 1980 proved to be a landmark year in terms of the budget process. In this last year of the Carter Administration, consultation in advance between OMB and Congress emerged as a noteworthy factor in the shaping of the President's revised budget request, and within Congress the attempt to undertake the reconciliation process in tandem with the first budget resolution was successful.

In January 1980, President Carter submitted a budget for fiscal year 1981 with spending of $616 billion and a projected deficit of $16 billion. But fiscal year 1979 (which had ended just four months earlier) showed a deficit of $28 billion, and the revised estimates for the current year of 1980 were placed at $40 billion. 115/ And in January 1980, the economic forecast appeared bleak, with a low rate of economic growth coupled with high rates of inflation and unemployment.

114/ Schick, Allen. Reconciliation and the Congressional Budget Process. Washington, American Enterprise Institute, 1981. pp. 6-7.

115/ Mathiasen, Recent Developments, p. 106.

The release of the 1981 budget request with the $16 billion deficit in light of the revised and rather gloomy forecast for 1980 (particularly double digit inflation) met with a negative response in the financial markets, with sharply rising interest rates added to the list of pessimistic indicators. According to an OMB career official, "These events were interpreted, correctly or not, as an indication that continued deficit spending was unacceptable." 116/ A former Carter appointee in OMB provided this description of events following the January release of the budget for fiscal year 1981:

> The financial community went crazy. Financial leaders, market newsletters, and various market soothsayers predicted economic collapse as the best of the fates awaiting the nation . . . .
>
> After a period of intense turmoil in the markets--the long-term bond market practically disappeared after the prime interest rate hit 21 percent--the president announced in February 1980 that administration officials would meet immediately with the Democratic congressional leadership to consider reactions to the budget he had proposed only six weeks earlier. In effect, events had forced the president to withdraw and reconsider his budget. After a widely published 11-day series of all-day meetings with members of Congress, President Carter presented at the end of March 1980 reductions of $3 billion in his 1980 budget and $17 billion in the 1981 budget 117/

On March 31, 1980, President Carter submitted a revised budget for FY 1981, reducing the current year deficit to $36.5 billion and projecting a 1981 surplus of $16.5 billion. 118/ The manner in which this revision occurred is of primary interest here. Unlike the traditional pattern of budget formulation carried out within the executive branch, the 1981 budget revisions "were literally negotiated between executive branch representatives (primarily the Office of Management and Budget and the White House) and the leadership in both houses of Congress." 119/ In the message accompanying the revised budget President Carter referred to the consultation involved:

116/ Ibid.

117/ Cutter, W. Bowman. The Presidency and Economic Policy: A Tale of Two Budgets. In Nelson, Michael, ed. The Presidency and the Political System. Washington, CQ Press, 1984. pp. 482-483.

118/ The 1981 deficit eventually ended up at $58 billion. See Mathiasen, Recent Developments, pp. 106-07.

119/ Mathiasen, Recent Developments, p. 107.

> Because of the great importance we attach to reducing spending, the leadership of the Congress and I have done everything within our power to reach general understandings in advance on reduction proposals. I and senior members of the administration met with members of the Congress hour after hour, literally day and night, in order to reach consensus. The importance of cutting spending to achieve a balanced budget was never seriously in dispute. But agreements on the approach necessary to achieve this balance were not easy to reach. They could be worked out only through a lengthy and sometimes tedious process of consultation. 120/

The actual budget cuts in 1980 were achieved by including reconciliation instructions as a part of the first budget resolution for fiscal year 1981. Justification for this action was found in the so-called "elastic clause" of the Budget Act, Section 301(b), which provides that the first budget resolution may mandate any "procedure which is considered appropriate to carry out the purposes of this Act." The first budget resolution in 1980 contained reconciliation instructions to eight House committees and ten Senate committees, assigning targets for revenue increases or spending decreases to be achieved but not mentioning specific programs. 121/

The 1980 Reconciliation Act, signed into law on December 5, 1980 (Public Law 96-499), saved around $5 billion, but established the practice of associating the reconciliation process with the first budget resolution, a technique that provided

> a critical vehicle for carrying out the budget policies of the next administration. In a press statement at the time, Senator Hollings, chairman of the Senate Budget Committee, stated, 'The underlying commitment that is represented here is perhaps even more important than the immediate effect.' 122/

CHANGING RELATIONS BETWEEN OMB AND CONGRESS DURING THE REAGAN ADMINISTRATION

Although some developments in the intensifying relations between OMB and Congress were underway by 1980, the extent and nature of

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120/ Cited ibid., p. 120.

121/ Keith, Robert A. Budget Reconciliation in 1981. Public Budgeting and Finance, v. 1, Winter 1981. p. 39.

122/ Mathiasen, Recent Developments, p. 107.

OMB involvement in congressional budget decisions has increased substantially under the Reagan Administration. As Heclo has observed:

> During its desperate try at a second budget in February-March 1980, the Carter Administration and senior OMB officials had struck a new note in centralized budget negotiations with Congress and making early use of the reconciliation process in each house to advance the administration's negotiated agreement. Still, the precedents pale in comparison with what happened after 1980. 123/

Not only did David Stockman prove to be an OMB Director of impressive talents, but with general program cutbacks in nondefense areas providing the central focus for President Reagan's domestic policy, the budget process itself came to occupy an unusual degree of prominence on the national scene. Thus the OMB Director enjoyed a special degree of personal support from President Reagan, "who needed OMB to help fulfill his budget-cutting mandate." 124/

David Stockman came to OMB after having spent the preceding four years as a House Member and having served as a congressional staffer for six years before that. Director Stockman thus spent the decade preceding his tenure as budget director on Capitol Hill, and he brought three of his top congressional aides along with him to OMB. Because of this background, Director Stockman has been characterized as "unique" among OMB directors in his knowledge of Congress and of the congressional budget process. Moreover, the former congressional aides who accompanied him to OMB all shared the philosophy that "a budget means nothing unless Congress adopts it . . . . OMB's involvement in the budget cycle ended only when Congress actually approved a budget months later " [rather than following initial submission of the the President's budget in January]. 125/

At his confirmation hearing, 126/ David Stockman offered insight about his views on the role of OMB Director in response to a question about the relationship between OMB, the President and Congress. He explained:

123/ Heclo, Executive Budget Making, p. 261.

124/ Davis, Budget Office Evolves into Key Policy Maker, p. 1814.

125/ Rauch, Stockman's Quiet Revolution, p. 1213

126/ Public Law 93-250 (88 Stat. 11; March 2, 1974) made the Director and Deputy Director of OMB subject to Senate confirmation. For background on this law and its legislative history, see Parris, Office of Management and Budget, pp. 44-50.

> . . . I envision OMB as first and foremost a part of the Executive Office of the President, responsible for developing, coordinating, and implementing the President's fiscal policies and governmental management and reorganization initiatives. At the same time, I recognize that the OMB has certain statutorily-created responsibilities to assist the Congress in its consideration of the President's budget. In view of my experience as a Member of Congress, I believe I am in a particularly good position to recognize the need for full cooperation with the jurisdictional committee (sic) as they consider policy questions on which OMB has the lead within the Executive branch. 127/

When Stockman announced his resignation in the summer of 1985, his most significant legacy, according to some observers, was his exercise of "unprecedented involvement in Congress' budget activities." 128/ The OMB Director had "become the President's chief budget negotiator with Congress." 129/

Reconciliation, 1981 Style. Less than a month after his inauguration in 1981, President Ronald Reagan outlined his major budget reduction proposals in an address to a joint session of Congress. The President called for a reduction of $45 billion in spending for fiscal 1981, and further proposed some $200 billion in reductions spread over the coming three years. The President concurrently called for a 30 percent reduction in income tax rates, to be phased in at ten percent a year. 130/ While both the spending and revenue cuts were to be spread out over three years, "presidential success hinged on having them all enacted at the start of the administration." 131/

Director Stockman provided a preview of his savvy style early in 1981 when he sought to gauge congressional reaction to possible budget cuts by circulating a list of proposals with an explanation justifying each cut. According to one account:

127/ U.S. Congress. Senate. Committee on Governmental Affairs. Nomination of David A. Stockman. Hearing, 97th Cong., 1st Sess., Jan. 8, 1981. Washington, U.S. Govt. Print. Off., 1981. p. 7.

128/ Davis, Budget Office Evolves into Key Policy Maker, p. 1809.

129/ Karmin, Monroe W. Stockman at OMB: A Hard Act to Follow. U.S. News & World Report, v. 99, July 22, 1985. p. 22.

130/ U.S. President, 1981- (Reagan). Program for Economic Recovery, Feb. 18, 1981. Weekly Compilation of Preesidential Dcouments, v. 17, Feb. 23, 1981. pp. 130-157.

131/ Shick, Budget as Instrument, p. 103

> Congress reacted with an outcry of complaint at both the content of Stockman's proposals and his unorthodox approach. Nevertheless, the budget director had succeeded in the first stage of his strategy. By presenting extreme proposals as an opening move he was able to prepare Congress psychologically to accept hitherto unthinkable budget cuts at a later stage. Eventually the legislators agreed on cuts that appeared to them modest and reasonable compared with Stockman's initial suggestions. The first major encounter between Congress and the OMB also identified for the director and his staff those legislators who would be future opponents in selling the budget and those who would be supporters. 132/

The Stockman strategy for getting the controversial cuts approved was to "roll it all up in one big package, get the approval of the congressional leadership and use the reconciliation process to force committees to comply." David Stockman reportedly predicted in January of 1981: "It's going to be like a giant watermelon rolling down the halls of the Congress." 133/

Republican control of the Senate, as a result of the 1980 elections, facilitated the process of OMB-congressional budget negotiations in 1981, when a "key feature of the process of developing a new budget was the large degree of consultation with the Republican leadership in the Senate . . . . The press carried numerous stories about the budget director carrying black looseleaf binders to Capitol Hill for discussions with the Senate leadership." 134/

The House and Senate reached agreement on the first budget resolution for fiscal year 1982 on May 21, 1981, incorporating in large measure the President's fiscal policy of sharply increased funding for defense along with substantial reductions in taxes and domestic spending. The reconciliation process was to achieve most of the cuts. Instructions accompanying the 1982 budget resolution established a multiyear perspective for reconciliation and involved more committees than had the fiscal year 1981 reconciliation effort; fifteen House committees and thirteen Senate committees received instructions to submit legislative recommendations for the three-year period (fiscal years 1982-84). With but one exception all the committees met the June 12 deadline for submission of their recommendations. 135/

132/ Johnson, From Analyst to Negotiator, p. 506.

133/ Rauch, Stockman's Quiet Revolution, p. 133.

134/ Mathiasen, Recent Developments, p. 108.

135/ Keith, Budget Reconciliation in 1981, pp. 41-42.

Floor action also proceeded with impressive dispatch:

> The Senate moved ahead on the omnibus bill a few days earlier' than the House. It debated the bill from June 22 through June 25, when it passed by a vote of 80-15. Thirty-four amendments were adopted, affecting the proposals of all the committees except one; 12 amendments were defeated.
>
> Action in the House was more dramatic, but just as expeditious. The House Budget Committee reported an omnibus bill on June 19 and the House debated the bill on June 25 and 26. On the first day, the Democratic leadership lost by a narrow margin the fight on the 'rule' setting the terms of consideration. This defeat enabled the Republican minority, in alliance with the 'bollweevils' (sympathetic Southern Democrats), to offer an amendment, dubbed 'Gramm-Latta' after its chief sponsors, more in line with the president's priorities. The next day, the Gramm-Latta amendment prevailed on a 217-211 vote and the reconciliation bill passed the House. 136/

By the end of July the House and Senate had reached agreement on a compromise reconciliation bill. On August 13, 1981, President Reagan signed into law the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35, 95 Stat. 357), and also the Economic Recovery Tax Act of 1981 (Public Law 97-34, 95 Stat. 132). Although the spending cuts involved over 260 budget accounts and amounted over the three years to more than $100 billion, Congress did not accede to all the cuts initially requested by the Administration.

The OMB director was later to acknowledge in the Atlantic Monthly interviews that "There was less there [in the reconciliation act] than met the eye." 137/ Still, the approach taken by the Administration during the the 1981 budget process was widely perceived to have "succeeded brilliantly," with considerable credit going to OMB and the tireless efforts of David Stockman. 138/ One writer has observed that the skill of President Reagan and OMB in maneuvering of the congressional budget process in 1981 "suggested that presidential control of budget policy might have been facilitated rather than checked by congressional budget reform." 139/

136/ Ibid., p. 43.

137/ Cited by Schick, The Budget as an Instrument, p. 104.

138/ Heclo, Executive Budget Making, p. 273.

139/ Ippolito, Dennis S. Reform, Congress, and the President. In Congressional Budgeting: Politics, Process, and Power. pp. 133-134.

New Capabilities for OMB. The experiences of 1981 also convinced the OMB director of the need to upgrade the capabilities within OMB to track the fast moving and complex developments involved with the congressional budget process. In order to support better Director Stockman's efforts to increase the influence of OMB in the making of budget decisions in Congress two new structures were created and two existing staff units were expanded considerably.

The establishment of the Central Budget Management System (CBMS) under the auspices of a new branch in the Budget Review Division was described above in the overview of OMB's organizational structure. An internal OMB document circulated in early 1982 highlighted the importance of CBMS's capacity to monitor budget developments in Congress.

The first objective slated for CBMS, according to this requirements analysis, was the capability of tracking different budget proposals including the President's budget, congressional budget resolutions, and appropriations bills; while the system was to keep current with any modifications, it was also to maintain "earlier versions for tracking purposes." The CBMS was also to provide explanations for any disparities among the proposals in the databases. Another objective of the CBMS was to maintain information on congressional and executive cost estimates of authorizing committee legislation such as a pending reconciliation measure, along with data on congressional sponsors of bills or amendments having budgetary implications. 140/

With the implementation of the CBMS, OMB thus gained a capability akin to that acquired a few years earlier by the Congressional Budget Office with respect to projecting budgetary implications of different scenarios, as well as tracking actual developments in the congressional budget process. As of mid-1985 the CBMS database contained "approximately 900 different budgets or budgetary proposals which can be used for simulation or comparative purposes. This includes different budgetary proposals made over the last 2 1/2 years as well as historical data that goes back to 1952." 141/ Of course estimates produced by OMB and CBO often differ, because the economic assumptions built into the respective simulation models vary.

140/ U.S. Office of Management and Budget. Centralized Budget Management System (CBMS) Requirements Analysis and Management Plan. Washington, OMB, Feb. 4, 1982. Cited by Tomkin, OMB . . . During the Reagan Administration, pp. 8-9. A third objective for CBMS was the ability to simulate outcomes of existing or hypothetical budget options in order to answer Director Stockman's "what if" questions, as described above.

141/ Tomkin, OMB . . . During the Reagan Administration, p. 10.

The enhanced capability for almost instantaneous monitoring of the shifting congressional budget numbers acquired by OMB with the CBMS has increased OMB's influence with executive agencies as well as with Congress. As described by one writer:

> The OMB has also used to advantage its role as budget scorekeeper, assuming a strong position in negotiating budget and fiscal policy adjustments with Congress. In addition, the organization has exerted this influence as budget monitor in dealing with other executive branch agencies. 142/

Another new unit, the Legislative Strategy and Support Group, was established in November of 1982. Two new administrative assistants came on board to assist the primary staff person, who had been in OMB's Legislative Affairs Office and before that served as a congressional aide to then Representative Stockman. The purposes of the Group included the following:

> The Legislative Support Group was designed to afford Stockman immediate support in preparing presentation for meetings with White House staff members and the President, as well as for Congressional negotiating sessions. To this end, it was located close to Stockman in the Old Executive Office building. Secondly, the group was designed to act as a more efficient information conduit between Stockman and the career staff (CBMS, BRD, and the program divisions . . . .
>
> Related to speed of information flow was the need to provide Stockman with more cross-cutting information to support his concentration on macro budgetary numbers as opposed to program specific budgeting.
>
> A final purpose of the Legislative Support Group was to coordinate congressional information requests to the examiners and make certain that careerists not be put into advocacy positions. 143/

A major duty of the Group was "to prepare the notes and data contained in black looseleaf notebooks that Stockman used to brief himself before any major meeting." The Group also had responsibility for preparing "Talking Points," which has been described as a "legislative lobbying tool" containing summary arguments against sections of legislation such as budget resolutions or appropriations bills to which the Administration strongly objected. A "Talking Points" review was typically distributed to Republican members of

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142/ Johnson, From Analyst to Negotiator, p. 508.

143/ Tomkin, OMB . . . During the Reagan Administration, pp. 12-13.

the committees involved before mark-ups and to all Republicans before floor votes. 144/

Unlike the CBMS, which is generally regarded as a major and lasting organizational contribution to the OMB institutional structure, the Legislative Support Group may not continue as a distinct entity. When the the principal staffer left in early 1985, she was replaced by two career examiners (one coming from CBMS and the other from a program division). As related by Tomkin, writing in mid-1985: "Since this transition, the Legislative Support Group has become a little less geared toward the preparation of advocacy papers and more inclined to prepare numbers and exercises and analysis such as those performed by CBMS staff." 145/ It appears possible that the continued existence of a separate Group may prove unnecessary and its functions might be split between the CBMS and the Office of Legislative Affairs.

The expansion and redesignation of the the former Congressional Relations Office to become the Office of Legislative Affairs in 1981 has already been noted. Before the establishment of the separate Legislative Support Group, the Office of Legislative Affairs had been handling most of the duties later transferred to the new unit, along with the continuing duties of monitoring Hill activities in person and responding to information queries from Congress.

Director Stockman also enhanced OMB's ability to monitor budget developments in Congress by expanding the bill tracking staff in the Budget Review Division. Previously there had been "a couple appropriations bill trackers who monitored legislative action throughout the [budget] process. These staffers attended appropriations sub-committee and committee hearings but did not attend floor debate." 146/

Under David Stockman the full-time bill tracking staff was expanded to fourteen, including five CBMS personnel. The functions of the staff also increased beyond preparation of weekly status reports on appropriations bills, budget resolutions, supplementals and continuing resolutions, to include preparation of "policy statements and subsequent position letters at every stage of the appropriations process" (including subcommittee and full committee mark-ups in each house and also conference stage). The OMB position letters were prepared about six times on average during each appropriation cycle and after receiving the approval of the Director,

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144/ Ibid., p. 13.

145/ Ibid., p. 14.

146/ Ibid., p. 6.

were sent to key congresssional committee chairs and ranking members and sometimes to the Senate leadership as well. 147/

For the preparation of the policy statements the trackers received guidance from the examiners in the program divisions and from Stockman himself. The examiners in turn now receive continuing briefing materials from the trackers including copies of congressional documents such as bill, reports, prints, excerpts from the Congressional Record, computer tables summarizing appropriation bill status, and weekly schedules of upcoming congressional actions. 148/

These developments within OMB highlight the ways in which Director Stockman attempted to mobilize OMB's staff resources "to serve the director's continuing need for up-to-date data on congressional activity." 149/ These augmented institutional capabilities for lobbying proved especially useful as OMB sought continued influence in the congressional budget process after the remarkable successes of 1981.

OMB and Congress from 1982-1985. The results of the OMB-congressional budget confrontations in 1982 and 1983 were something of a stalemate. As described by Heclo:

> In 1982 the president proposed a budget extending major cuts in domestic programs, continued rapid increases in defense spending, and no new taxes. OMB's deficit projections were widely regarded as being unrealistically low and, as in 1981, politically motivated to gain barginning advantages against Congress. This rather ideologically pure budget was pronounced dead on arrival in Congress, but after repeated efforts the Democratic-controlled House was unable to agree on any alternative budget. In the Senate, the Republican leadership crafted a scaled-back version of the original Reagan proposals and eventually won presidential support for a substantial tax increase to moderate the more realistic Congressional budget Office projections of Federal deficits. 150/

Stalemate again proved the outcome of the conflict between OMB and Congress over the budget in 1983. The Administration's position had been weakened by the midterm elections in 1982 which had added twenty-six Democratic seats in the House and in effect destroyed

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147/ Ibid., p. 11.

148/ Ibid., p. 12.

149/ Schick, The Budget as an Instrument, p. 114.

150/ Heclo, Executive Budget Making, p. 114.

the winning coalition in 1981 of House Republicans joined by the "boll weevils." The President's budget for fiscal year 1984 projected a $189 billion deficit and continuing economic adversity. According to Schick:

> Congress exhibited a great deal of independence in cutting the defense increase in half, but it was unable to win White House support for a tax increase to narrow the deficit. Significantly, however, the appropriations bills moved through Congress much more expeditiously than they had in previous years, and ten of the thirteen regular bills were enacted into law. Presidential threats to veto appropriations that exceeded the budget were not implemented. 151/

Although the broad economic strategy has remained relatively constant during the course of the Reagan Administration, the tactics employed by OMB in efforts to influence the budget process in Congress were changing. As Heclo suggests:

> The aim of the executive budget strategies remained fixed: to gain whatever bargining leverage could be had over congressional budget decisions. The means employed were constantly changing, first, because the political context within Congress was always in motion as the perception of a Reagan mandate eroded after 1981 and second, because economic realities and worries in financial markets about the deficit were continually upsetting budget plans and their attendant bargains. The result was a constant jujitsu-like maneuvering by the executive with few reliable institutional relationships from one budget engagement to the next." 152/

By 1983 the focus of OMB barginning in the congressional budget process had shifted from the Budget Committees to the appropriations and authorizing committees. According to one description:

> By 1983, the OMB was very active and visible, lobbying the appropriation committees for funding for 1984. The experience of the previous two years had equipped the organization to pursue this sort of monitoring work; it had developed an effective system of intelligence gathering and had learned to react quickly to bring its influence to bear on committees and subcommittees. 153/

151/ Schick, The Budget as an Instrument, p. 105.

152/ Heclo, Executive Budget Making, p. 272.

153/ Johnson, From Analyst to Negotiator, p. 508.

Schick has suggested that the very success and comprehensiveness of the 1981 Omnibus Reconciliation Act created backlash against the Budget Committees and their powers viz-a-viz other committees. "The 1981 experience poisoned the well for reconciliation and led to a much more limited use of this process in the 1982-84 period." 154/

Instead of attempting virtually to take charge of the reconciliation process, OMB subsequently had to adopt a more decentralized, piecemeal approach in dealing with Congress:

> As the President found it increasingly difficult to muster the political support to make his budget prevail through any omnibus resolution and reconciliation process, the admininstration put more of its effort into fighting for restraint in the appropriation and authorization committees and subcommittees . . . . In 1981 David Stockman had been the prime mover in a national budget process of epic scale. But in 1984 he was mainly in the role of chief damage control officer fighting a defensive, rearguard action throughout the congressional committee system. 155/

Moreover, the budget negotiations devolved to particular line items. Instead of dealing with Budget Committee Members or congressional leadership on broad aggregates of revenue and spending, OMB found itself attempting to bargain with program supporters in the authorization and appropriation committees who in general tended to be skeptical about the necessity of further spending cuts in their programs. Against this background, Schick has observed, "Stockman's endless budget negotiations and the overuse of the threat of a presidential veto can be seen as evidence of presidential weakness, despite the outward appearance of strength." 156/

After 1982 the Reagan White House in effect gave up on the congressional budget process, the President's later budgets having been "by his aides' own reckoning, 'dead on arrival' at the Hill, leaving Stockman to negotiate alternatives with Congress." 157/ While the tactics have changed from the comprehensive budget resolution and reconciliation approach to piece-by-piece bargaining on individual spending programs, David Stockman reportedly maintained his intensity of effort on into 1985. For example, according to a Congressional Quarterly article:

154/ Schick, The Budget as an Instrument, p. 108.

155/ Heclo, Executive Budget Making, p. 276.

156/ Schick, The Budget as an Instrument, p. 108.

157/ Davis, Budget Office Evolves into Key Policy Maker, p. 1814.

> In May, for instance, after staying up through the night to witness his daughter Rachel's birth, he met Senate Republicans for a breakfast meeting on the budget. Days later, in the office of Majority Leader Robert Dole, R-Kan, he negotiated with Republicans almost to the moment the Senate voted, about 2 a.m., on its fiscal 1986 budget resolution. It was approved by one vote. 158/

The House and Senate completed action on S. Con. Res. 32, the budget resolution for fiscal year 1986, on August 1, 1985, with approval of the conference report. 159/ S. Con. Res. 32 called for $276 billion in savings for fiscal years 1986-88. Most of the reductions were to be attained through annual appropriations bills, but at least $75.5 billion was to be achieved by the reconciliation process, as a result of approving statutory changes in various programs. Pursuant to the reconciliation instructions accompanying S. Con. Res. 32, the Budget Committees reported omnibus reconciliation acts in early October. 160/

The House sought to incorporate the reconciliation proposals for fiscal year 1986 in a series of bills: H.R. 3500, H.R. 3128, H.R. 2817, and H.R. 2100, which together would save an estimated $80.6 billion. The major pieces, H.R. 3500 and H.R. 3128 passed the House in October. 161/

158/ Ibid., p. 1814.

159/ U.S. Congress. Conference Committees, 1985. First Concurrent Resolution of the Budget--Fiscal Year 1986. Conference Report to Accompany S. Con. Res. 32. House Rept. No 99-249. 99th Cong., 1st Sess. Aug. 1, 1985. Washington, U.S. Govt. Print. Off., 1985. 41 p.

As in some other years, this first concurrent resolution carried the "automatic second budget resolution" provision, allowing that if Congress did not complete action by October 1, 1985, on the second concurrent resolution on the budget for FY 1986, then this concurrent resolution should be deemed to be be such second current resolution for purposes of the Congressional Budget Act of 1974.

160/ U.S. Congress. Senate. Committee on the Budget. Consolidated Omnibus Budget Reconciliation Act of 1985. Report to Accompany S. 1730. Senate Report No. 99-146, 99th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1985. 635 p.; and U.S. Congress. House. Committee on the Budget. Omnibus Budget Reconciliation Act of 1985. Report to Accompany H.R. 3500. House Report No. 99-300, 99th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1985. 831 p.

161/ Calmes, Jacqueline. Agreement Paves Way in Senate For Textile, Deficit-Cutting Bills. Congressional Quarterly, v. 43, Nov. 9, 1985. p. 2335.

The Senate passed its own version of reconciliation, S. 1730, on November 14, 1985, by vote of 93-6. The Senate bill sought to reduce the deficit by $85.7 billion over three years, but included several provisions (also included in the House version) objectionable to the Reagan Administration. Among the provisions opposed by the White House were three revenue measures--permanent extension of the 16-cents-a-pack cigarette tax, new import duties to finance a trade program, and a tax on manufacturers to finance toxic-waste clean-up. According to Congressional Quarterly, both the White House Chief of Staff and the OMB Director had previously warned "both chambers of a veto unless those proposals and several others were changed." The conference on the reconciliation measures commenced after Thanksgiving. 162/

At the end of November 1985, the congressional budget process for fiscal year 1986 appeared to represent another year of stalemate between OMB and the Congress. In addition to the unfinished business of the reconciliation bill, much of the Federal Government was operating by means of short-term continuing resolutions, and the raising of the statutory debt ceiling had become entangled with a controversial deficit reduction bill, originally introduced as S. 1702, the Balanced Budget and Emergency Deficit Control Act of 1985, which subseqently became known as the Gramm-Rudman-Hollings legislation (Public Law 99-177). 163/

By the time Congress adjourned in December of 1985, major developments with respect to the budget process had occurred. The passage of a continuing resolution, funding those agencies without FY 1986 appropriation laws for the remainder of the fiscal year, removed the need for further action on appropriation measures. 164/ Enactment of H. J. Res. 372, the Balanced Budget and Emergency Deficit Control Act of 1985, 165/ promised to bring about far

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162/ Calmes, Jacqueline. Senate Passes $85.7 Billion Bill to Cut Deficit Over Three Years. Congressional Quarterly, v. 43, Nov. 16,1985. p. 2350.

163/ See: U.S. Library of Congress. Congressional Research Service. Brief Summary of House and Senate Action on House Joint Resolution 372: Increase in the Public Debt Limit. Typed Report, by Robert A. Keith and Edward M. Davis, Oct. 11, 1985. Washington, 1985. 8 p.; and Wehr, Elizabeth. Senate Passes Plan to Balance Federal Budget. Congressional Quarterly, v. 43, Oct. 12, 1985, pp. 2035-2042.

164/ H.J. Res. 465 was passed by Congress shortly before adjournment, and was signed on December 19, 1985 (Public Law 99-190).

165/ Public Law 99-177, 99 Stat. 1037, December 12, 1985. In the opinion of many the passage of Gramm-Rudman-Hollings precluded the necessity for completing action on the pending reconciliation act.

reaching changes in the budget process and in OMB-congressional relations. The final section of this study below seeks to review briefly some recent proposals for reform of the budget process and also to outline implications of this new law for the future of the budget process and relations between OMB and Congress.

Transition in OMB Leadership. Meanwhile, OMB began functioning with a new Director. David Stockman's departure had been rumored about for some time. For example, a National Journal article reported in May of 1985: "Many people in Washington expect Stockman to leave OMB when the current budget cycle is over; he has said nothing publicly about his plans . . . . " 166/

On July 9, 1985, Director Stockman announced his resignation, to be effective August 1. He indicated his plans to join the New York investment firm of Salomon Brothers. In announcing the Stockman departure, White House spokesman Larry Speakes read a brief statement from the President, in which the President praised the OMB Director for his "dedication and distinction. His tireless effort to bring fiscal discipline to the federal government and to ensure economic stability for the country are deeply appreciated," the President continued. 167/

Reaction to the announcement in Congress was in general along the lines expressed by Senate majority leader, Robert Dole (R-KS), who stated: "They're going to have a tough time finding a replacement. He knows the numbers. He knows the programs." Although there were sometimes disagreements between Director Stockman and Members, "At least he knew what he was talking about, and that is refreshing around this town." 168/ Senator Pete Domenici (R-NM), who chairs the Senate Budget Committee, observed that Stockman "has had more impact and been the most effective OMB Director we've ever had." 169/ But Senator Ernest F. Hollings (D-SC) tempered the unanimity of praise by suggesting that David Stockman "was too smart, too clever. He was misleading at almost every turn on all those blooming figures." 170/

166/ Rauch, Stockman's Quiet Revolution, p. 1212.

167/ Cannon, Lou. Stockman Quits OMB to Join Banking Firm. Washington Post, July 10, 1985, p. A1, A6.

168/ Weinraub, Bernard. Stockman Resigns Top Budget Post; Going to Wall Street. New York Times, July 10, 1985, p. A1, A14.

169/ Cannon, Stockman Quits OMB, p. A6.

170/ Ibid.

A brief retrospective analysis of David Stockman at OMB appearing in U.S. News and World Report later in July stressed the role of Stockman as "an activist director":

> Stockman enlarged the director's job far beyond its historic role as number cruncher in chief. He tightened the screws on spending all over the government, with the notable exception of the Pentagon. He took the lead away from cabinet members in carrying the President's fiscal flag on Capitol Hill. His numbers frame the debate over the budget and define what can be cut. And he was the administration's principal public spokesman for spending reductions. 171/

The same article quoted CBO Director Penner as saying, "Stockman brought more visibility and power to OMB than any other budget director." 172/

On July 19, 1985, President Reagan nominated the-then Chairman of the Federal Trade Commission, James C. Miller, III, to be David Stockman's successor at OMB. The announcement also stated that OMB Deputy Director Joseph M. Wright, Jr. would serve as acting director in the probable interim between the Stockman August 1 departure and Senate confirmation of nominee Miller. 173/

The Senate Governmental Affairs Committee held a hearing on the Miller nomination on September 24, 1985, which lasted more than three hours. James Miller offered a brief initial statement and then responded to a lengthy period of questioning regarding his experience and philosophy. About ten other witnesses also appeared or provided statements for the record. 174/

There was little dispute over Miller's academic qualifications and previous Government experience. He earned a doctorate in economics from the University of Virginia and subsequently held positions in university teaching, with private research institutes, and in Federal service. However, his policy positions have elicited more debate. As one bibliographic sketch stated:

171/ Karmin, Stockman at OMB, p. 22.

172/ Ibid.

173/ Hoffman, David. FTC Chairman Chosen to Head Budget Office. Washington Post, July 20, 1985, p. A1.

174/ Hearing record not yet published; from materials available in Governmental Affairs Committee files.

> His doctoral thesis on airline deregulation set the tone for what has been more a cause than a career. He has espoused decontrol of industries as an economist at the Transportation Department, the Brookings Institution and the American Enterprise Institute for Public Policy Research (AEI), and at posts in the Nixon, Ford and Reagan Administrations. 175/

James Miller first served in the Reagan Administration at OMB as head of the regulatory affairs office, and in the fall of 1981 moved to become the Chairman of the Federal Trade Commission.

An article which FTC Chairman Miller had written before his nomination of OMB Director but which gained publicity preceding the confirmation hearing in effect called for deregulation of mail service so as to break up the monopoly of the U.S. Postal Service: "'Private enterprise will get the mail delivered--just as it did in the Old West,' Miller wrote in an article published in the Cato Journal, a free-market-oriented periodical." 176/ A panel of representatives from three Postal Service unions testified at the confirmation hearing, in an effort to forestall any future intentions about implementing the ideas stated in the article, and went on record in opposition to the nomination should Mr. Miller persist "in his desire to change the private express statutes . . . ." 177/

The Committee had also submitted some prehearing written questions to Mr. Miller. In response to a query about the "most important functions of the position," Mr. Miller stated:

> First, the OMB Director organizes the President's budget for its presentation to Congress.
>
> Second, the Director endeavors to assure that agencies procure resources in an economical manner, that they manage them effectively, and that the costs they impose upon the private sector through regulations, paperwork, *et cetera* are the minimum necessary to secure the public interest.

175/ Calmes, Jacqueline. 'Toughest Kid' Miller Has Big Shoes to Fill. Congressional Quarterly, v. 43, Sept. 14, 1985. p. 1811.

176/ Associated Press. Miller Favors Breakup of Post Office Monopoly. Washington Post, Aug. 28, 1985. p. G2.

177/ Testimony of Vincent R. Sombrotto, President National Association of Letter Carriers before the Senate Committee on Governmental Affairs on Nomination of James C. Miller to be Director of the Office of Management and Budget. Sept. 24, 1985. p. 6. [Committee files pending publication of hearing].

> Third, the Director works with Congress and others to accomplish the President's overall program. 178/

In addition to probing Miller's background and qualifications, the hearing also accorded an opportunity for raising questions relating to the general oversight of OMB. For example, Senator Thomas Eagleton noted that in addition to assessing the nominee's capabilities, "Since our Committee has oversight jurisdiction over OMB, we must probe Mr. Miller's philosophy and approach to running OMB." 179/ As reported in the New York Times:

> One of the main topics of inquiry today [at the Miller hearing] was the larger role that the Office of Management and Budget has assumed in the Reagan Administration, with two Democrats, Senator Thomas Eagleton of Missouri and Senator Albert Gore, Jr. of Tennessee taking the lead in complaining that the agency has usurped powers from Congress. 180/

Two days after the hearing, on September 26, 1985, the Senate Committee approved the Miller nomination unanimously, but Senator Eagleton stated his intention to delay floor action on confirmation until he received clarification about a proposed revision of an Executive order affecting affirmative action.

On October 3, 1985, the day before floor consideration of the Miller nomination, Senator William Cohen offered a statement, reporting his support of Mr. Miller. But the Senator also indicated his discomforture with certain answers given by Mr. Miller at the confirmation hearing. As explained by Senator Cohen:

> I asked Mr. Miller whether or not he believes that the executive branch has an obligation to follow a law that is duly enacted by Congress and signed by the President, provided that no court has ruled it unconstitutional.
>
> This was not a hypothetical question. Last year, Mr. Miller's predecessor at the OMB, acting at the behest of the Attorney General, issued a directive ordering Federal

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178/ U.S. Congress. Senate. Committee on Governmental Affairs. Prehearing Questions for James C. Miller, p. 1. [Committee files].

179/ Statement of Senator Thomas F. Eagleton. Confirmation Hearing of James C. Miller, III, before the Senate Committee on Governmental Affairs, Sep. 24, 1985, p. 1. [Committee files].

180/ Budget Director Nominee Pledges to Pursue Federal Spending Cuts. New York Times, Sept. 25, 1985.

> agencies to ignore certain provisions of the Competition in Contracting Act that the Justice Department believed to be unconstitutional.
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> Mr. Miller's response, in essence, was that he would defer to the Department of Justice should such an issue arise. Since it was the Department of Justice which ordered his predecessor to direct all agencies to ignore the law, his response greatly concerns me. 181/

Also included in Senator Cohen's statement as printed in the Record was a recounting of the events surrounding the dispute over the Competition in Contracting Act and accompanying documentation. 182/

On October 4, 1985, the Senate considered the nomination of James C. Miller, III, for Director of OMB. During a brief debate five Senators participated with speeches or statements for the record.

Senator William Roth, chairman of the Governmental Affairs Committee, noted the legacy of the Stockman era at OMB: "As we are all aware, Mr. Miller has big shoes to fill. His predecessor, David Stockman, made significant changes in the way the Federal budget is formulated, and in the operation of the OMB." Senator Roth also referred to the lengthy confirmation hearing "which provided an extensive view of his qualifications and his capabilities. James Miller brings an impressive array of credentials as the nominee to head the Office of Management and Budget." 183/

Senator David Durenberger observed that the role of OMB Director had undergone radical change in the last five years, so that it seemed like "a different job altogether." He went on to note, "Today, the OMB Director has accumulated power beyond what any of us would have imagined." The budget process has also changed dramatically since 1974 and especially since 1981, so that instead of reflecting policy decisions the budget process now constitutes

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181/ Cohen, William. Executive Department Compliance with Law. Remarks in the Senate. Congressional Record, Daily Edition, v. 131, Oct. 3, 1985. p. S 12520.

182/ Ibid., pp. S 12520-S12530. Senator also mentioned what he viewed as another example of noncompliance with the law by the Reagan Administration--the so-called nonacquiesence policy of the Social Security Administration whereby rulings of circuit courts are not applied beyond the individual case in which the decision was rendered.

183/ Roth, William. Remarks in the House. Congressional Record, Daily Edition, v. 131, Oct. 4, 1985. S. 12617.

a major source of lawmaking. The legacy of the Omnibus Budget Reconciliation Act (OBRA) of 1981 also had profound effect upon the relationship between the OMB Director and Congress:

> Before OBRA, the OMB Director was part of the audience in the congressional budget process. To be sure, he was always on tap, but he was not on top. Now the OMB Director is up on the stage itself. He is a central player--keeper of the numbers, carrier of the President's message on Capitol Hill, policymaker in his own right. 184/

Senator Durenberger also raised issues relating to OMB's role in regulatory reform, as did Senator Max Baucus. 185/

Senator Eagleton provided a statement, explaining his concern with Mr. Miller's views on the proposed revision of the Executive Order dealing with affirmative action: "In particular, I wanted assurances that the revision would not in fact remove the current requirement that Government contractors and subcontractors must keep statistics on the number of minorities and women they recruit and hire." Correspondence between the Senator and Mr. Miller and then with Secretary of Labor, William Brock, apparently allayed his concerns. 186/

The final statement came from Senator Strom Thurmond, who spoke in support of Mr. Miller's qualifications. Whereupon the Senate voted to confirm the nomination by vote of 90-2. 187/

Mr. Miller was sworn in as the new OMB Director on October 8, 1985. He brought with him to OMB three former FTC bureau directors and its general counsel. 188/

According to Alan Greenspan, economic adviser to the President, "The power of the office [of OMB head] is more a matter of the capacity of the director himself than it is a matter of law." 189/ Among his other distinctions David Stockman held the budget directorship longer than had anyone else since World War II. So there was naturally speculation as to whether Miller would

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184/ Senator David Durenberger. Ibid., p. 12618.

185/ Senator Max Baucus. Ibid., pp. 12620-21.

186/ Senator Thomas Eagleton. Ibid., pp. S12619-20.

187/ Senator Strom Thurmond. Ibid., p. 12622,

188/ Miller Aides Follow Him to OMB. Washington Post, Oct. 9, 1985.

189/ Karmin, Stockman at OMB, p. 22.

prove to be so forceful and influential in his role as OMB Director as was his predecessor.

In the immediate aftermath of the Stockman resignation, a Washington Post article quoted unnamed White House officials to the effect that the next OMB Director would have "considerably less independence" and would not continue as "the dominant figure in domestic policy-making." 190/

In terms of his relationship to the President it has been suggested that James Miller's position may more resemble that of James McIntyre than that of David Stockman. As related in an article in Congressional Quarterly:

> Under Carter, OMB's effectiveness on the Hill was undercut because the White House domestic policy staff was predominant on budget matters. Similarly, Nixon's last budget director, Roy L. Ash, was overshadowed by White House aides H.R. Haldeman and John D. Erlichman. And many expect Miller will be required to defer to Reagan's White House chief of staff, Donald T. Regan." 191/

Concurrent with consideration of the Miller confirmation in the fall of 1985, other issues involving OMB and Congress were in the news. For example, on September 26, the General Accounting Office held that OMB had improperly impounded $11.5 million of the $89 million appropriated by Congress to aid counties with large numbers of refugees. 192/ Another example of OMBcongressional disagreement occurred in early October, when a subcommittee of the House Energy and Commerce Committee issued a report resulting from oversight investigation. As characterized in the lead from a Washington Post article:

> The Office of Management and Budget illegally blocked federal efforts to ban most uses of asbestos, with the help of a highranking Environmental Protection Agency official who 'capitulated to pressure,' according to a new congressional report. 193/

190/ Hoffman, David. New OMB Chief Is Expected to Get Shorter Leash. Washington Post, July 11, 1985.]

191/ Davis, Budget Office Evolves into Key Policy Maker, p. 1812.

192/ Rich, Spencer. OMB Said to Impound Refugee Aid Improperly. Washington Post, Sept. 27, 1985.

193/ Peterson, Cass. OMB Illegally Blocked EPA Plan for Asbestos Ban, Report Says. Washington Post, Oct. 4, 1985, p. A21. For further analysis of OMB's growing role in the regulatory process, see below, report by Morton Rosenberg.

To be sure Director Miller's first weeks at OMB in October-November 1985, were far from tranquil. As an article in the Wall Street Journal reported:

> Just one month after taking over at the Office of Managment and Budget, Jim Miller has found himself besieged by a hail of crucial fiscal issues. Ordinarily a budget director would be spending October and November busily preparing for the administration's annual budget submission to Congress early in the new year.
>
> But Mr. Miller and his top aides have been forced to dive into congressional negotiations over the Gramm-Rudman balanced budget amendment, which would completely revamp the budget process. 194/

These highly unusual circumstances make even preliminary observations on James Miller's leadership of OMB in his initial weeks, in comparison to his predecessors, virtually impossible.

However, the Wall Street Journal article, quoting the staff director of the Senate Finance Committee, noted that if Jim Miller "pulls Gramm-Rudman off, he may have done more in a couple of months than Dave Stockman did in his whole five years." 195/ The Balanced Budget and Emergency Deficit Control Act of 1985 was signed into law on December 12, 1985, and some of its major provisions affecting OMB and the budget process are surveyed in the following section.

REFORM PROPOSALS AND THE FUTURE OF THE BUDGET PROCESS

Suggestions for reforming the Federal budget process have come from various quarters in recent years. Only a cursory overview of some reform proposals and recent changes affecting the future of the budget process and of OMB-congressional relations can be provided here. 196/

194/ Blustein, Paul. New Budget Chief Miller Getting a Trial by Fire Fueled by Deficit-Curb and Debt-Ceiling Battles. Wall Street Journal, Nov. 11, 1985, p. 50.

195/ Ibid.

196/ The enactment of the complex and unprecedented Gramm-Rudman-Hollings measure (Public Law 99-177) shortly before the production deadline for this document precluded any detailed assessment of its impact.

Studies and Recommendations. A report of the National Academy of Public Administration (NAPA), issued in November of 1983 and titled Revitalizing Federal Management, concluded in part that

> . . . the Federal budget process is seriously overburdened and that in the increasing preoccupation with the dollar and policy issues of the budget, the system itself has been undervalued and badly needs modernization and simplification. 197/

Among its specific recommendations, the NAPA study suggested that the budget formulation process could be simplified by reducing the amount of detail required in budget preparation documents across the board and by not using the process as an information gathering system beyond that needed for budget decisionmaking purposes. The report emphasized that "OMB's willingness to take the lead in budget formulation improvement is the key." 198/

With regard to "streamlining budget execution," the NAPA report noted the difficulty of generalizations because of the variations in procedures among agencies. In brief, the report called for actions to grant greater discretion to agency managers in order to facilitate flexibility and hopefully efficiency in allocation of budget resources, while at the same time decreasing somewhat the controls over execution now available to OMB and Congress. For example, recommendations included lessening line item and object class (budget category) controls, expanding agency authority for reprogramming of monies among activities within the same account as well as transferring of funds between accounts, returning apportionment authority to agency heads with OMB automatically apportioning all "nonproblem" accounts, and establishing threshholds for reporting rescissions and deferrals. 199/

A report in early 1985 by the Comptroller General, titled Managing the Cost of Government, identified a "Streamlined Budget Process" as one of four key elements for reform. With regard to streamlining the process, the report suggested:

> To be effective, the federal budget process must be made more manageable, and integrated with the planning, programming and accounting phases of financial management.

197/ National Academy of Public Administration. Revitalizing Federal Management: Managers and Their Overburdened Systems. A Panel Report. Washington, NAPA, 1983. p. 15.

198/ Ibid., p. 21.

199/ Ibid., pp. 23-25.

> Reform is needed in both Congress and the executive branch. This effort should concentrate on eliminating unnecessary repetition, detail, and obstacles to action. The system and its operating procedures must be designed so that program managers, policy officials and Members of Congress can focus on the difficult budget choices that must be made. 200/

Within OMB reform of the Executive budget process also has received attention as a component in the Administration's "Reform '88" management improvement program. Automation of the budget process has been identified as a priority in this effort, with important implications for formulation procedures. 201/

In addition, changes affecting budget formulation and execution have been incorporated into bills in recent years. For example, proposals for instituting a two-year budget cycle have been introduced. Attention has also been directed to control of year-end spending and to possible amendments of the Impoundment Control Act, as already noted.

Meanwhile, the Task Force on the Budget Process of the House Rules Committee reviewed problems in the operation of the congressional budget process and considered proposals for improvement, in the period from 1982-84. The final report of this group, often referred to as the Beilenson Task Force after its Chairman, was issued in May of 1984. As summarized in the transmittal letter:

> Briefly, the task force recommends adopting one binding budget resolution (which includes reconciliation instructions) each year, expediting the timetable for budget-related activity in Congress, strengthening budget controls and focusing them at the committee level, expanding the scope of the process to include off-budget Federal entities and controls for credit and tax expenditures, and improving coordination of the process in the House of Representatives. These changes will allow Congress time to complete work on the budget prior to the start of the fiscal year; they will provide us with the tools we need to better understand and act on budget issues; and they will promote

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200/ U.S. General Accounting Office. Comptroller General. Managing the Cost of Government: Building an Effective Financial Management Structure. Vol. I, Major Issues. GAO/AFMD-85-35. Washington, U.S. Govt. Print. Off. Feb. 1985. p. 3.

201/ For further discussion of Reform '88, see OMB's Management Role: Issues of Structure and Strategy, by Benda and Levine, elsewhere in this volume.

better accountability among the committees which participate in the budget process. 202/

Several recommendations of the Beilensen Task Force came to be incorporated in the Gramm-Rudman-Hollings legislation in 1985, as described below.

Balanced Budget and Emergency Deficit Reduction Act of 1985. As noted above, at the end of November 1985, important unfinished business remained with respect to the fiscal year 1986 budget, including the reconciliation bill and an omnibus continuing resolution to cover agencies lacking enacted appropriation laws for the duration of the fiscal year. When Congress adjourned for the session on December 20, action on the reconciliation measure remained uncompleted. 203/ However, the continuing resolution did pass both houses the previous day and was signed into law (Public Law 99-190).

But the most far-reaching action in December of 1985 with respect to the Federal budget process was undoubtedly the passage of the Gramm-Rudman-Hollings Act (Public Law 99-177). As characterized in Congressional Quarterly, in signing this measure on December 12, 1985, "President Reagan signed into law a radical revision of budgeting procedures, requiring the federal deficit be eliminated using conventional legislative means or, failing that, through unprecedented, automatic spending cuts." 204/

While there appears to be general agreement that the Gramm-Rudman-Hollings Act is destined to have major impact on the budget process and relations between OMB and Congress, there is less certainty as to what the precise consequences may be. As Senate

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202/ U.S. Congress. House. Committee on Rules. Report of the Task Force on the Budget Process. Committee Print, 98th Cong., 2d Sess. Recommendations to Improve the Congressional Budget Process, to accompany H.R. 5247. Washington, U.S. Govt. Print. Off., 1984. p.iii.

203/ Some have suggested that the concentration on Gramm-Rudman-Hollings "delayed reconciliation largely because it consumed enormous amounts of time and attention from the same members of Congress and staff who would have been working on budget reconciliation." See Wehr, Elizabeth. Congress Enacts Far-Reaching Budget Measure. Congressional Quarterly, v. 43, Dec. 14, 1985, p. 2606. See U.S. Congress. Conference Committees, 1985. Consolidated Omnibus Budget Reconciliation Act of 1985. Conference Report to accompany H.R. 3128. House Report No. 99-453, 99th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1985. 718 p.

204/ Ibid., p. 2604.

Budget Committee Chairman Domenici noted, "I don't think anybody can predict how the way we do business will change. But it will be dramatic." 205/

The speed with which the Gramm-Rudman-Hollings measure was enacted, along with its scope, contributed to the uncertainities concerning its potential impact:

> There was no conventional committee action, in either chamber, on the budget measure, which had been introduced as S 1702 on Sept. 25. Without the formal economic, procedural, or legal analyses that legislation of such importance would ordinarily undergo, members acted largely on speculative statements about what the legislation would do. 206/

On October 9, 1985, the Senate voted to add the budget balancing plan from S. 1702 to the measure increasing the Federal debt ceiling (H.J. Res. 372). The House decided to go immediately to conference, in order to preclude the possibility of a "stampede in that chamber to accept the Senate plan, which even advocates said needed much clarification and revision." 207/ On October 31, the first conference disbanded in disagreement, and the following day the House approved a revised version of the amendment, worked out by its conferees. Within a week the Senate again passed its version, with modification. The second conference, officially a 66-member group, soon shrank to a small working group that worked out the final version in closed-door sessions. 208/

President Reagan provided the Administration's formal endorsement of Gramm-Rudman-Hollings (original Senate version) on October 4, less than a week before its initial passaage by the Senate. James Miller assumed his role as OMB Director on October 8. As noted above, this was an especially hectic period at OMB: "Besides Gramm-Rudman-Hollings, which the Senate was busy amending, the fiscal 1986 appropriations process was in full swing, a struggle was under way to adopt a reconciliation bill containing dozens of budget-cutting provisions that Congress agreed to in its fiscal 1986 budget resolution and, above all, OMB was beginning preparation of Reagan's budget for fiscal 1987. . . ." 209/

205/ Cited ibid., p. 2606.

206/ Ibid.

207/ Ibid., p. 2605.

208/ Ibid.

209/ Kirschten, Dick and Jonathan Rausch. Political Poker Game Over Deficit Bill Calls Bluff of Reagan and Congress. National Journal, v. 17, Dec. 14, 1985. p. 2859.

Beset with these competing demands, according to a National Journal article, OMB Director Miller chose to concentrate his immediate attention on the 1987 budget, with a commitment of meeting the fiscal year 1987 deficit limit in the measure of $144 billion. Meanwhile, he delegated day-to-day handling of Gramm-Rudman-Hollings to Timothy J. Muris, executive associate director of OMB (who had moved from the FTC to OMB with Miller). According to this article, congressional aides credit Mr. Muris with proposing a key compromise: the 50-50 formula, whereby in the event of automatic cuts to comply with the deficit ceiling, half were to come from defense and half from domestic spending. This had been a major dispute dividing House and Senate conferees. Director Miller himself apparently went to Capitol Hill to discuss Gramm-Rudman-Hollings only a couple of times. 210/

Overall, the Reagan Administration maintained a fairly low profile with regard to the legislation. Although Director Miller was a strong supporter of Gramm-Rudman-Hollings initially, Secretary of Defense Weinberger was a vocal critic. According to the National Journal story, the resultant low key approach may have been essential to the measure's passage:

> OMB and the White House developed their demands [concerning Gramm-Rudman-Hollings] as the proposal's implications became clear. A senior Senate Republican aide said that this was largely what kept things going. 'Stockman would have said [initially], "I like the concept, but before I buy onto it, I want these 52 things." ' Miller's greater distance from the process, by contrast, gave congressional negotiators the room they needed to get an agreement, the aide said. 211/

Although the approach taken by OMB and Director Miller was thus acknowledged as instrumental to the legislation's success, the National Journal article cited an OMB official who suggested that toward the end "Miller would have been glad to see the measure die in conference because it had 'become a menace to the President's program.' " 212/ On Tuesday, December 10, 1985, the Washington Post reported a "last minute snag," the details of which were not disclosed, between the White House and the conferees working on the

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210/ Muris apparently contributed some other, less consequential, suggestions which were adopted by the conference. OMB's efforts to affect the legislation were complicated, since the conferees met in closed sessions. Ibid., p. 2859, 2860.

211/ Ibid., p. 2860.

212/ Ibid.

deficit reduction plan. The concern of the Administration apparently centered on the anticipated impact of the potential spending cuts on defense. The Post story suggested that Director Miller and OMB had revised upward the previous weekend the estimated cuts likely to be necessary in defense in this fiscal year under Gramm-Rudman-Hollings to $5.8 billion; the preceding Friday, Miller had projected the defense cuts at $2.9 billion. 213/ However, the conferees reached final agreement later that evening, including a provision allowing greater flexibility to the President in imposing any mandatory defense cuts in 1986. President Reagan then endorsed the legislation as approved by the conferees. 214/ Both the Senate and House acted favorably on the conference report on December 11, and the President signed the Balanced Budget and Emergency Deficit Control Act of 1985 into law the following day.

The Balanced Budget and Emergency Deficit Control Act of 1985 sets mandatory ceilings for the Federal budget deficit, with the maximum level allowable for the deficit decreasing each year, from $171.9 billion for fiscal year 1986 to zero in fiscal year 1991. If regular budget and appropriations actions fail to bring the deficit below the stipulated ceiling, the Act establishes procedures to effect automatic spending reductions in non-exempt programs by means of a mandatory sequestration of funds. The Comptroller General determines the amount of the required reductions, following submission of a joint OMB/CBO report estimating the deficit for the year in light of economic conditions and outlining budget baselines for all the respective accounts and programs. 215/

Five provisions of this highly complex legislation can be singled out for the purposes of this discussion of OMB and the budget process. First, the date for submission of the President's budget to Congress is moved forward for future years. Sec. 241(a) replaces the previous submission deadline of "during the first 15 days of each regular session of Congress," with the new requirement of submission "On or before the first Monday after January 3 of each

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213/ Walsh, Edward and David Hoffman. Balanced-Budget Measure Snags. Washington Post, Dec. 10, 1985. pp. A1, A15.

214/ Walsh, Edward and David Hoffman. Reagan Endorses Conferees' Balanced-Budget Legislation. Washington Post, Dec. 11, 1985. p. A1.

215/ For further discussion of provisions in Gramm-Rudman-Hollings, see U.S. Library of Congress. Congressional Research Service. Explanation of the Balanced Budget and Emergency Deficit Control Act of 1985 -- Public Law 99-177. Report No. 85-1130 GOV, by Allen Schick, Consultant. Washington, December 1985, 21 p.

year (or on or before February 5 in 1986)". 216/ In effect this means that the President's budget must be ready for distribution the first week in January, whereas recent practice has usually seen delivery to Congress the last week in January. This advance in the timetable of course impacts upon the budget preparation duties of OMB.

A second requirement of Public Law 99-177 affecting executive branch budget preparation comes in Sec. 241(b), with the stipulation that the President may not submit a budget for a fiscal year with a projected deficit exceeding the ceiling for the year as provided in Gramm-Rudman-Hollings (for example, with a deficit not to exceed $144 billion for the fiscal year 1987 budget). Such an apparent limitation on the President's discretion in formulating the budget seems to represent a new development in the history of the Federal budget process.

A question might be raised as to whether this provision mandating that the President's budget submission contain a specific deficit level might violate the President's constitutional authority to make such recommendations to Congress as he deems necessary (Article II, Section 3). However, according to a CRS legal interpretation:

> Nothing in Gramm-Rudman prohibits the President from submitting any proposal or budget he desires. It merely requires him to submit one budget in which deficits are consistent with statutorily established ceilings. . . .
>
> Congress may impose mandatory duties and reporting requirements on the President. The Constitution imposes on the President the duty to faithfully execute the laws, Article II, section 3, and the Court has held that 'it would be an alarming doctrine, that Congress cannot impose upon any executive officers any duty they may think proper, which is not repugnant to any rights secured and protected by the Constitution.' . . . The imposition of a particular reporting requirement -- in this case a budget that is within certain statutory guidelines -- does not however, preclude the President from submitting other budgets or any other recommendations pursuant to his authority. . . . 217/

216/ U.S. Congress. Conference Committees, 1985. Increasing the Statutory Limit on the Public Debt. Conference Report to accompany H.J. Res. 372. House Report No. 99-433, 99th Cong. 1st Sess. Washington, U.S. Govt. Print. Off., 1985. p. 27.

217/ U.S. Library of Congress. Congressional Research Service. Selected Constitutional Questions Raised by Gramm-Rudman Deficit Reduction Proposal. Typed Report, by Richard Ehlke, Oct. 24, 1985. Washington, 1985. pp. 7-8.

A third provision of the new law establishes a major reporting responsibility for OMB (and CBO), as detailed in Section 251. This constitutes the first in the series of steps provided for in the legislation, leading to the elimination of deficits exceeding the statutory ceilings for the respective years. As explained by Allen Schick:

> The deficit reduction process begins with a joint OMB/CBO report issued in August (except for fiscal year 1986) estimating the deficit for the ensuing fiscal year (in fiscal year 1986, for the fiscal year in progress.) This report would estimate the expected rate of economic growth and determine whether (for all years except fiscal years 1986 and 1991) the deficit will be more than $10 billion in excess of the maximum level.
>
> If the OMB and CBO directors cannot agree on common estimates, they shall average their estimates for purposes of the deficit reduction process.
>
> The OMB/CBO report shall also estimate for each nondefense account and for each defense program, project and activity (PPA) the base from which reductions are to be taken and the dollars and percentages by which reductions are to be made to lower the estimated deficit to the maximum level. 218/

The law stipulates certain assumptions to be used in the calculations, but still allows considerable latitude for methodological development (which is why the OMB and CBO reports may diverge in their findings.) The law further provides that the Comptroller General is to review the OMB/CBO report and "with due regard for the data, assumptions, and methodologies" in it, issue a report stipulating the excess deficit and the base from which reductions are to be made, as well as the dollars and percentage reduction for each account.

Questions have been raised concerning the constitutionality of the authority to be exercised by CBO in the deficit reduction process. 219/ In late December the Justice Department challenged the role given to the Comptroller General on "separation of power grounds," contending that he was an officer of the legislative branch. 220/ In anticipation of such judicial challenges the law

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218/ Schick, Explanation of the Balanced Budget and Deficit Control Act of 1985, p. 6.

219/ U.S. Library of Congress. Congressional Research Service. Pro-Con Constitutional Analysis of Gramm-Rudman Deficit Reduction Proposal. Typed Report, by Richard Ehlke, Dec. 11, 1985. Washington, 1985, pp. 6-8.

220/ Pear, Robert. Law on Balancing Budget is Flawed, U.S. Advises Court. New York Times, Dec. 31, 1985. pp. A1, D5.

provides for expedited judicial review and stipulates a fallback procedure (Section 274). The House and Senate Budget Committees are to be constituted into a Temporary Joint Committee on Deficit Reduction, should the OMB/CBO reporting requirements be invalidated. The Joint Committee could then report a joint resolution containing the necessary reductions as determined in the GAO report, and legislative action on the measure could proceed.

OMB will undoubtedly be involved in another step of the process -- the issuance of the sequestration order by the President. If and when necessary, the mandatory across-the-board spending cuts (except for exempted programs) are to be accomplished by a sequestration order (the name for this special type of impoundment action). As described by Schick:

> If the Comptroller General has identified an excess deficit, the President shall (on September 1, except for fiscal 1986) issue an order that eliminates the excess deficit in strict conformance with the sequestration requirements of the Act.
>
> The President's sequestration order may not modify or recalculate any of the estimates and determinations of the Comptroller General's report and must be consistent with it in all respects. The only flexibility the President has pertains to limited discretion in allocating defense reductions in fiscal 1986. 221/

The CBO/OMB and GAO reports and the President's sequestration order would actually be issued twice each year, in August and then the final order in October. Congress could of course enact legislation in the interim period to reduce or eliminate entirely the projected deficit, thereby removing the need for the sequestration order. Some supporters of the legislation contend that this is likely what will happen. The threat of the automatic spending cuts will force Congress to act with dispatch in the intervening period to avoid sequestration. There may well be intense OMB-congressional negotiations during such a time to arrive at reductions mutually agreeable to the President (to avoid a veto) as well as to Congress.

Such withholding of funds by the President in response to statutory directive is not without precedent, although the tight parameters of the sequestration authority suggest a new direction. For example, the omnibus appropriations law of 1950 directed President Truman to cut the budget by not less than $550 million without impairing national defense. In 1967, 1968, 1969, and 1970

221/ Schick, Explanation of the Balanced Budget and Deficit Reduction Act of 1985, p. 7.

Congress enacted spending ceilings to be implemented by impoundment actions of the President. 222/

There is clearly more room for the exercise of discretion by OMB in the report-preparing stage than with the drawing up of the sequestration order. However, both procedures create significant new authorities/duties for the President's budget agency.

The final provisions of the Gramm-Rudman-Hollings law to note with respect to this survey of features particularly important to OMB and the Federal budget process relate to changes in the congressional budget process. As noted previously, several of the recommendations made by the Beilenson Task Force were incorporated in the law. In conformity with recent practice, Congress will now adopt only one budget resolution, due by April 15. The budget resolution must now include reconciliation instructions necessary to bring about its provisions and must not exceed the respective annual deficit ceilings (except in wartime). In addition to accelerating the timetable, the new law seeks to strengthen the enforcement of congressional budget decisions. 223/

With respect to scope, the law mandates inclusion of credit authority and all offbudget entities except social security in the President's budget as well as in congressional budget resolutions. While social security is to be excluded from the budget totals, it is to be included for purposes of calculation of the deficit ceilings. The various changes in the budget process contained in the Balanced Budget and Deficit Reduction Act thus promise to affect not only the congresssional budget process, but also the broader Federal budget process. Budget preparation by OMB will obviously be affected by this effort to control so-called backdoor spending. And OMB involvement with the legislative stage of the budget process will evolve with the changes in the congressional budget process.

The overall future of the Federal budget process, along with OMB's central role within it, will be influenced significantly by the implementation of the Gramm-Rudman-Hollings legislation assuming that it survives the judicial and political challenges of initial implementation. Some of the provisions of the new law which seem especially important to OMB have been cited in the preceding discussion. But as noted at the outset of this section, no one seems certain as to precisely how the process will actually operate in practice, and judicial challenges have yet to be resolved. At the least, one can predict with some confidence that the impact of the new law on the Federal budget process will be considerable.

222/ See Fisher, Presidential Spending Power, pp. 152-153.

223 / See Schick, Explanation of the Balanced Budget and Deficit Reduction Act, pp. 19-21, for a summary of modifications in Federal budget procedures.

OMB'S MANAGEMENT ROLE: ISSUES OF STRUCTURE AND STRATEGY

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Introduction

From the time of its inception in 1921, in addition to its primary role as the President's budget staff, BoB/OMB has been charged with broad "management" responsibilities. Although historically there has been some controversy as to what "management" in the Federal context properly encompasses, the traditional conception of BoB/OMB's managerial function may be formulated in the following terms: to provide leadership on the President's behalf in addressing general problems bearing on the organization and effectiveness of the executive branch, and to assist in the design and implementation of government-wide strategies aimed at enhancing the ability of Federal agencies to carry out their statutory missions. This general conception of the agency's "management" role has its roots in the Budget and Accounting Act of 1921 and has since been reinforced by a series of Executive Orders and reorganization plans, up to and including the reorganization of 1970 which transformed the Bureau of the Budget into the Office of Management and Budget. However, as this report will document, concern about BoB/OMB's institutional capacity to provide management direction for the executive branch has been a persistent theme throughout much of the agency's history.

President Roosevelt's Committee on Administrative Management (the Brownlow Committee) was the first in a long series of presidential advisory groups and panels to urge that concrete steps by taken to strengthen BoB/OMB's management role. With some notable exceptions, most of these recommendations were never implemented and, in the view of many observers, the few efforts that have been made to shore up the "management" side of BoB/OMB's operations generally have proven of only limited or temporary value. In the past few years, recognition of some of the recurring problems which have hampered the effectiveness of OMB's management efforts has led to several recommendations for reorganizing responsibility for directing government-wide management improvement activities. Five of these proposals merit serious attention. They are:

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* Leave "management" with OMB but upgrade the "M-side" functions by creating two deputy directors, one for management, and one for budget, and expand the "M-side" staff;

* Transfer the "M-side" functions of OMB to the Office of Personnel Management (OPM), thereby creating an "Office of Management" (OM);

* Create a large and powerful "Office of Federal Management" (OFM-I) that would add the General Services Administration (GSA) and OPM to the current OMB (recommended by the President's Private Sector Survey on Cost Control, the Grace Commission);

* Create a much smaller, independent "Office of Federal Management" (OFM-II) which would assume the "M-side" functions of OMB and several other functions not presently undertaken by OMB (recommended in a draft paper circulated by a panel of the National Academy of Public Administration); and

* Create two entities, an "Office of Federal Management Policy" (OFMP) in the Executive Office of the President and an independent "Office of Federal Operations" which would combine to operating functions of OMB, OPM, and GSA. 1/

Although the primary impetus behind each of these proposals is to address one or more problems which recent Presidential administrations have confronted in trying to use BoB/OMB to design and implement management improvement efforts, it is important to attempt to understand and assess them in broader historical context. In reading through the account of BoB/OMB's changing approaches to managing the executive branch that precedes the more detailed discussion of the pros and cons of the five proposals identified above in the final section of this report, it may be helpful to bear in mind three general points that the agency's history can be said to teach us.

First, it is difficult if not impossible to develop a workable structure for management improvement in the Federal government if there is little agreement as to what the concept of "management" properly encompasses in this context. On occasion in BoB/OMB's history, this has meant that "management" entails budgeting as well as other functions, but at most other times, budgeting has been considered outside the scope of management. In recent years, the lack of an agreed-upon doctrine of public administration like that enunciated by the Brownlow

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1/ A more detailed account of these five proposals, and of the rationales underlying them, is provided in the final section of this report. See pp. 60-73 below.

Committee and first Hoover Commission has hindered BoB/OMB's management improvement efforts and weakened the position of the management side of the agency. Efforts to operate without a comprehensive management doctrine and to undertake reorganization and management improvement efforts through an incremental, issue-by-issue approach suggests the absence of an overall direction to guide line agency activity and also makes it difficult to argue for management reforms before Congress.

Second, BoB/OMB's effectiveness in the management sphere has to a considerable extent varied with the importance individual Presidents have attached to management improvement efforts. As a general proposition, it may be said that during periods of austerity and governmental retrenchment Presidents and top BoB/OMB officials alike have been inclined to define "management" narrowly, in terms of economy and efficiency, emphasizing budgetary, cost-reduction strategies. This has usually meant the relegation of the agency's management function and staff to a decidedly subordinate position vis-a-vis the budget functions and divisions. Some Presidents have consciously endeavored to assign higher priority to management issues and to fortify BoB/OMB's institutional capacity to provide leadership in addressing those issues on a government-wide basis. However, despite intermittent efforts to offset the traditional emphasis on cost-cutting administrative reforms at the expense of other aspects of management, fiscal pressures have repeatedly resulted in the subsumption of management under budget in BoB/OMB's order of business.

Third, the role of BoB/OMB as the central staff arm of the President has often cast the agency into a competitive relationship with the White House staff on the one hand and with officials in the line agencies and departments on the other for control of the management improvement agenda. This competition has had several significant implications. For example, most management improvement initiatives aimed at building the administrative capacity of the executive branch are viewed as "apolitical" and therefore have generally failed to attract the enthusiastic support of the White House staff, whose chief concern has been to redirect policy to the President's political advantage. The addition over the past decade and a half of a new layer of political appointees to the top of OMB's structure is but one important indication of efforts to ensure that OMB become more responsive to the policy goals of particular Presidential administrations. In the view of many former BoB/OMB career management officials (as well as numerous students of the agency), however, this development has compromised the management staff's reputation as an institutional embodiment of "neutral competence" and introduced new difficulties in relations between OMB and the White House, as well as between OMB and the line agencies and departments.

Strains in the relations between OMB and the line agencies have also arisen as a result of two other important and mutually-reinforcing developments. First, in recent decades the management capacity of many departments and agencies has been strengthened through the addition of in-house management staffs so that OMB no longer enjoys the near-monopoly of expertise in the "management" sphere that it was widely acknowledged to possess during the years immediately preceding and following World War II. Second, the credibility and authority of the BoB/OMB management staff in the eyes of many line officials and managers have been compromised as a result of the introduction of a series of White House-inspired management improvement initiatives. A succession of budget-related management strategies (like PPBS, MBO, and ZBB) which the management arm of BoB/OMB was charged with implementing government-wide is generally acknowledged to have placed a great paperwork burden on the line departments and agencies without producing much in the way of lasting accomplishments. BoB/OMB itself may not be entirely to blame for the recurrent tendency to "oversell" these innovative management improvement techniques. But its association with these new "systems" has made it difficult for the agency to escape the political fallout they occasioned. The dim view that many line agency officials have come to take of centrally-directed management improvement efforts represents another formidable obstacle to the effectiveness of OMB management initiatives in the contemporary context.

FROM BoB to OMB: 1921-1970

The Early Period: 1921-1937

Formal responsibility for broad-based efforts at management improvement was conferred upon the new Bureau of the Budget by the Budget and Accounting Act of 1921, Section 209 of which provided that:

> The Bureau, when directed by the President, shall make a detailed study of the departments and establishments for the purpose of enabling the President to determine what changes. . . should be made in 1) the existing organization, activities, and methods of business of such departments and establishments, 2) the appropriations therefore, 3) the assignment of particular activities to particular services, or 4) the regrouping of services. The results of such study shall be embodied in a report or reports to the President, who may transmit to Congress such report or reports or any part thereof with his recommendations on the matters covered thereby. 2/

The language of Section 209 gives some indication of the importance sponsors of the 1921 Act attached to reform of executive branch organization and administration as an integral component of the post-World War I campaign to ensure greater "economy and efficiency" in government. It took time and considerable prodding, however, before the BoB assumed an active role along the broad lines envisaged in this

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2/ Public Law 67-13, June 10, 1921, Section 209.

provision. To the extent that the agency's early activities may be said to have been oriented toward management improvement at all, they were studiously confined to the narrow range of concerns falling under the heading of departmental "methods of business". Larger problems of organization and management were "conspicuously neglected" 3/ by the bureau's early leadership, and the authority vested in the BoB by Section 209 lay effectively dormant for almost two decades.

That the BoB did not stake out a strong leadership role in administrative management during this early period is in some respects quite understandable. The "self-imposed parsimony" of the bureau's early leadership, which forced the agency to commence operations within the Treasury Department with a staff of about 45 full-time employees, 4/ served to circumscribe the full range of its formal "management" responsibilities in any event. But even had BoB's founding Director Charles Dawes and his immediate successors aspired to exercise the full extent of the authority conferred in Section 209, ambitious overtures along these lines would have embroiled the young agency in jurisdictional battles with at least two other entities that were already exercising significant responsibilities in the field of organization and management.

The more important and established of these entities was the Bureau of Efficiency. Originally a division of the Civil Service Commission, the Bureau of Efficiency emerged to prominence as "the first permanent organization in the executive branch dedicated to administrative problems" after 1916, 5/ when it was removed from the CSC and established as an independent agency reporting directly to the President. By the time Dawes assumed the directorship of the BoB in 1921 the Bureau of Efficiency's role in monitoring various aspects of federal personnel policy was fairly well-defined. But the Bureau's work extended into other aspects of management as well; by 1919, for example, it had begun to issue annual in-depth studies of organizational problems and accounting and business practices in various federal departments and offices as well as broader reports of government-wide scope. All of these activities combined to make this Bureau "the nearest approach. . . to a management consulting unit" the government would have in the pre-New Deal era. 6/ The existence and

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3/ Mosher, Frederick C. A Tale of Two Agencies: A Comparative Analysis of the General Accounting Office and the Office of Management and Budget. Baton Rouge, Louisiana State University Press, 1984. p. 45.

4/ Berman, Larry. The Office of Management and Budget and The Presidency, 1921-1979. Princeton, Princeton University Press, 1979. p. 8.

5/ Mosher, Tale of Two Agencies, p. 46.

6/ Ibid.

activities of the Bureau of Efficiency helps explain why the early leadership of BoB chose a diminished role for the agency in the management area. As Frederick Mosher recently observed, "The Budget and Accounting Act of 1921 made no mention of the Bureau of Efficiency, even though there was a clear overlap of its functions with those intended for the Bureau of the Budget. . . ." 7/

Another factor accounting for BoB's reluctance to forcefully tackle management issues was the Joint Committee on the Reorganization of the Administrative Branch of Government, which was congressional and not executive in character. Although the Bureau of Efficiency occasionally became actively involved in the design and implementation of departmental reorganization plans, broader work in the field of executive branch reorganization during the early 1920s was considered to be the special province of this Committee. Chaired by presidential designee Walter F. Brown, this body had already commenced operations by the time General Dawes arrived in Washington at President Harding's behest to head up the new budget bureau. To avoid "confusion, overlap, and conflict, Dawes, Brown, and the President agreed that the investigations toward reorganization should be left with the congressional committee and that the BoB should stay out of the field, at least at the outset." 8/

The larger institutional-political context in which the BoB found itself during the early and mid-1920s no doubt does much to explain its "conspicuous neglect" of broad issues of organization and management during this period. But this is not the whole nor even necessarily the more important part of the story. Indeed, it is arguable that neither the on-going efforts of the Bureau of Efficiency on the one hand, nor those of the joint congressional committee on the other, necessarily precluded more aggressive ventures on the BoB's part into the organization and management area. In the long run, the existence of these entities certainly did not present an insuperable obstacle to the bureau's assumption of a leadership role in this field. The mandate of the congressional joint committee on reorganization was temporary in any event 9/, and the importance and scope of the Bureau of Efficiency's projects seemed to decline in the later 1920s. In fact, by the early 1930s, overtures to abolish that agency and transfer its functions to the BoB were afoot. The first formal proposal to that effect, made by President Hoover, was rejected along with the

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7/ Ibid.

8/ Ibid., p. 47.

9/ The committee's recommendations, embodied in a report entitled "Reorganiztion of the Executive Departments," were submitted the Congress in 1923. Congress did not act on its proposals, and the committee subsequently disbanded. See Mosher's account: Ibid., p. 47.

entire package of reorganization proposals he forwarded to a Democratic Congress in December of 1932. But the demise of the Federal government's "first experiment with a central management staff" 10/ became established fact shortly thereafter, on the eve of Franklin D. Roosevelt's inaugration. The fact that the BoB did immediately not move into the vacuum created by the termination of the Bureau of Efficiency, however, attests to the minimal importance its first three directors, Dawes (1921-1922), Herbert M. Lord (1922-1929) and J. Clawson Roop (1929-1933), attached to organization and management as a potential field of activity and concern. 11/ Their collective vision of the agency's mission, which emphasized above all its role as an instrument of "economy" in government, probably had more important long-term ramifications for BoB/OMB's capacity to direct broad-based management improvement efforts than the presence of its early institutional competitors.

The theme of "economy and efficiency" was, of course, very much in the air at the time the BoB began operations -- President Harding had adopted this as "the foremost objective and issue of his administration" 12/ -- and Charles Dawes' energetic campaign to establish the budget bureau as "the President's primary staff agent for ensuring economy and efficiency in matters of routine business" 13/ was altogether in keeping with that emphasis. The course he charted was, to be sure, instrumental in guiding the staff's early efforts and did much to ensure a well-defined institutional role for the Bureau in its early years. But Dawes pursued the objective of attacking alleged "waste and extravagance" in government with a narrow and single-minded zeal that (as a later BoB appraisal of his tenure acknowledged) left the Bureau substantially unprepared "for the assumption of functions more typical of a general administrative staff agency." 14/ The drive to reduce the normal operating expenses of federal departments and agencies through the reform of routine business practices came to dominate the BoB's orientation, and in practical terms this meant a focus on its budget-supervision function to the virtual exclusion of all else. The fact that the early cost-reduction campaign lauched by the BoB under Dawes' guidance was a

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10/ Mosher, Tale of Two Agencies, p. 47.

11/ See the account provided in: Berman, Office of Management and Budget and the Presidency, p. 7-8.

12/ Mosher, Tale of Two Agencies, p. 44.

13/ Berman, Office of Management and Budget and the Presidency, p. 7.

14/ U.S. Bureau of the Budget. Staff Orientation Manual. Washington, U.S. Gov't. Print. Offc., 1945. p. 38.

dramatic success 15/ only encouraged retention of the budget-cutting emphasis under the directorships of Lord and Roop. Each of his successors inherited Dawes' insistence that "economy" demanded scrupulous attention to accounting methods and other elements of departmental financial management (e.g., purchasing, supply, property and equipment, etc.). More importantly, they reinforced Dawes' tendency to regard management improvement "as part of the budget review process of identifying waste and reducing spending." 16/

It is here, in the tendency to subsume "management" under "budget", that the long-term effect of the BoB's early leadership upon the agency's capacity to direct government-wide management improvement efforts was probably most pronounced. The down-playing of broader issues of organization and governmentwide administrative reform that characterized this early era was largely a by-product of the budget-cutting, economizing image and self-perception of the BoB that Dawes and his successors imparted. According to some observers, that image and self-perception has persisted down to the present day.

In theory, of course, there is no inherent conflict between "managerial" and "budgetary" responsibilities. The basic BoB/OMB concept of combining these two functions in one agency has, on the contrary, been based on the assumption that they can be complementary and mutually-reinforcing -- that "the processes of budget examination would identify many of the problems of government on which [the] management experts would work", and that management reform and improvement ventures would in turn "derive their real influence from being linked with the budget." 17/ But in the 1920s and through much of the 1930s, as in many periods since, the budget and related national economic issues simply proved all-consuming, and the effect was to drain away time, interest, and staff from the "management" side of BoB's operations. In any event, the priorities of Dawes and his immediate successors in the direction of strict financial control did much to raise the important question of the appropriate relation of emphasis and linkage between "management" and "budget" in BoB -- a persistent and vexing problem that continues to figure prominently in contemporary discussions of OMB's management role.

15/ In his budget message for 1923, President Harding "indicated considerable pride in the reduction in 'ordinary' expenditures from 4.1 to 2.1 billion dollars between 1921 and 1923, or by nearly 50 percent." Mosher, Tale of Two Agencies, p. 37.

16/ Berman, Office of Management and Budget and the Presidency, p. 7.

17/ National Academy of Public Administration. Panel on Executive Organization and Management. A Proposal for Creation of The Office of Federal Management. Draft, April 1985. p. 6.

FDR-Truman: 1937-1952

The management void which occurred with the demise of the Bureau of Efficiency on the one hand and the restricted view of the Budget Bureau's role held by its early Directors on the other did not go unnoticed for long. With the coming of the New Deal and the attendant proliferation of federal agencies, the efficient and effective management of the executive branch became a critical concern. The urgency of this problem was well appreciated by President Franklin Roosevelt, who, at the outset of his second term, set up a Committee on Administrative Management. Chaired by Louis Brownlow, the panel was to report to the President on the organization and effectiveness of the Federal government and to devise a plan for increased staff support for the chief executive. Subsequently, the committee's report of 1937 provided the "rationale", if not the "specifics", for the Executive Office of the President and "the central role therein of the Bureau of the Budget." 18/ Hence, it is often said to mark the beginnings of the modern development of the BoB.

An important new concept introduced in the Brownlow report was the concept of "administrative management," which in general terms supported the notion of a more centralized structure of presidential control of the executive branch. The report noted that the Bureau of the Budget was "the logical staff agency" to operationalize this concept for the President in his duties as head of the executive establishment. 19/ It pointedly observed, however, that the agency had failed to achieve (or even to "approximate") its maximum potential "usefulness or effectiveness as an instrument of administrative management." 20/ The Committee's proposal to transfer the Bureau from the Treasury Department to a new Executive Office of the President was largely prompted by a concern to bolster its "practically undeveloped" administrative research function. In this respect, the report suggested, BoB had "missed its greatest opportunity." 21/ It also sought to ensure that the President, who "need[ed] help," would henceforth be adequately staffed and equipped to exercise direct control over "the great managerial functions of the government." 22/

18/ Mosher, Tale of Two Agencies, p. 65.

19/ U.S. President. President's Committee on Administrative Management. Report of the Committee with Studies of Administrative Management in the Federal Government, 1937. p. 20.

20/ Ibid., p. 16.

21/ Ibid.

22/ Ibid., p. 5. Included under the Brownlow Committee's definition of the "great managerial functions of government" were the following: personnel management, fiscal and organizational management, and planning management.

The transfer of the BoB to the Executive Office of the President, as recommended by the Brownlow Committee, was effected in Reorganization Plan No. 1 of April 25, 1939. 23/ Three weeks earlier, on April 1, President Roosevelt had appointed Harold Smith to be the Bureau's Director, a position he would hold until mid-1946. An ardent adherent of the doctrine of public administration enunciated by the Brownlow Committee, Smith shared its concern that the Budget Bureau play a leading and vital role in improving the organization and management of the Federal government.

Under his direction, the BoB was reorganized into five new Divisions, including a Division of Administrative Management. To this division was entrusted the responsibility conferred on the Bureau in Executive Order 8248 of September 11, 1939, to "conduct research in the development of improved plans of administrative management, and to advise the executive departments and agencies of the Government with respect to improved administrative organization and practice," as well as responsibility for preparing Presidential reorganization plans. 24/ Although it never approached in staff size its counterpart, the Division of Estimates (which absorbed most of what had been the BoB), "from the point of view of those who proposed it and to top officials of the Bureau of the Budget at the time," the birth and growth of the Division of Administrative Management was "the most significant development" during Smith's long and influential tenure as Director. 25/

Throughout the Second World War the staff of the Division of Administrative Management grew rapidly -- it numbered about 75 in 1942 and, by one account, over one hundred at the war's end 26/ -- and the

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23/ 53 Stat. 1423. President Roosevelt proposed this transfer pursuant to the authority vested in him in the Reorganization Act of 1939 (Public Law 76-19, April 3, 1939), which authorized the President to transfer agencies and functions by submitting to Congress reorganization plans that would become effective in 60 days unless vetoed by vote of both the House and Senate.

24/ The Division of Administration Management was divided into two branches. The larger, called the Management Improvement Branch, was responsible for the advisory and supervisory function vis-a-vis the individual departments and agencies, the smaller for processing presidential reorganization plans and for other government-wide organizational and procedural matters.

25/ Mosher, Tale of Two Agencies, p. 70.

26/ Estimates of the Division's size during the early- and mid-1940s (as during other periods) vary somewhat, but according to Berman it had a staff of 37 in 1940 and 77 in 1942. See his: The Office of Management and Budget and the Presidency, p. 28. The source for the 100-plus figure is: Mosher, Tale of Two Agencies, p. 70. During Smith's tenure, the size of the Bureau's staff as a whole grew from about 45 to over 600 in 1944. Ibid., p. 69.

organization and management activities it superintended on the President's behalf were "probably . . . the major source of BoB's fame during the 1940s." 27/ One leading commentator has described the range of functions performed by the Division during this period in the following terms:

> It handled ad hoc managerial problems, many coming from the President himself (Roosevelt or Truman), and was a fruitful source of information and intelligence about incipent problems, many of which were relayed ... to the White House, some to the President personally. ... Furthermore, it became a major bastion of qualified personnel available for detail or transfer to other parts of the bureau and to other federal agencies, not excluding the White House itself. Through the personal and frequent contacts of the director of the budget and the president ... it had direct communication and liasion with the very top of the executive branch of government. 28/

A number of distinctive factors contributed to the prominence and prestige of the Division of Administrative Management during the Smith era. Allen Schick has suggested that: "During its existence, the Bureau [of the Budget] was most successful when it possessed a near monopoly in the exercise of a particular function deemed vital to presidential interests." 29/ The situtation with respect to the Division of Adminstrative Management in the 1940s seems to confirm the validity of this general propostion. Few Presidents before or since have exhibited as strong an interest in organization and management as did Presidents Roosevelt and (to a lesser extent) Truman, each of whom placed considerable trust in the Division. Their support and other circumstances combined to assure the the Bureau's virtual monopoly of the organization and management field. According to Mosher: "During the war, when [the Division of Administrative Management] essentially won its spurs and developed its mode of operating, it had little competition in the Executive Office of the President, then quite small." 30/ The planning for and establishment of emergency agencies in connection with war mobilization was a matter of considerable urgency and, as an account written during the war years noted, "Of the entire President's office, only the . . . Bureau of the Budget had any detailed knowledge of federal

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27/ Mosher, Tale of Two Agencies, p. 107.

28/ Ibid., p. 104

29/ Schick, Allen. The Bureau of the Budget That Was: Thoughts on the Rise, Decline, and Future of a Presidential Agency. Law and Contemporary Problems, v. 35, summer 1970. p. 521.

30/ Mosher, Tale of Two Agencies, p. 104.

organization." 31/ Moreover, during this period the Bureau "enjoyed a favorable position vis-a-vis most federal departments which (with some notable exceptions such as Agriculture) did not possess management staffs of their own and were willing to turn to the Bureau for advice and guidance." 32/

It is important to note that the Bureau of the Budget's monopoly position in the administration and organization area did not go entirely unchallenged during the 1940s. For a brief period in the immediate aftermath of the war, the Office of War Mobilization and Reconversion (OWMR) ventured into the BoB's responsibilities for administrative coordination and became increasingly influential in that field, threatening to reduce the Bureau to "a mere budget-processing agent." 33/ But in November 1946, OWMR was abruptly abolished. "Where only one year earlier presidential competitors had knocked jurisdictional shoulders in the EOP orbit, the Budget Bureau now stood alone." 34/

The abolition of OWMR, however, roughly coincided with Smith's retirement as Director of the BoB, and in the absence of his strong support of the Division of Administrative Management's activities the latter's dominance of management issues began to fade. Shortly after Smith's departure in mid-1946, "administrative management was downgraded in the Bureau, and the authorized strength of [the Division] was sharply cut." 35/ Subsequent developments were to reveal that, even in the absence of competition from within the EOP and from the line agencies, the Division of Administrative Management's institutional standing was anything but assured. A number of internal BoB studies conducted shortly after the war questioned the Division's efficacy, and the general thrust of these criticisms was reinforced by the first Commission on Organization of the Executive Branch of the Government's (the first Hoover Commission, 1947-1949)

31/ Pearson, Norman. The Budget Bureau: From Routine Business to General Staff. Public Administration Review, v. 3, 1943. p. 43.

32/ Schick, The Budget Bureau That Was, p. 529.

33/ Mosher, Tale of Two Agencies, p. 104.

34/ Berman, Office of Management and Budget and the Presidency, p. 39.

35/ Schick, The Budget Bureau That Was, p. 529. According to Marver Bernstein, a succession of budget redutions in the period 1948-1950 cut most deeply into the Division of Administrative Management's Management Improvement Branch, reducing the Division's total staff to less than 55 professionals. Bernstein, Marver. The Presidency and Management Improvement. Law and Contemporary Problems, v. 35, summer 1970. p. 506, 508.

task force on budgeting and accounting, which launched what has been termed an "acidulous" attack both on its absence of relations with the Estimates Division and its alleged failure to develop a "comprehensive approach" to organizational and management improvement. 36/

One important by-product of the first Hoover Commission report, which was issued in February 1949, was to stimulate President Truman to embark on an ambitious management improvement program. In July 1949, the President issued Executive Order 10072 ("To Provide for Continuing Action to Improve the Management of the Executive Branch of Government"), which directed department and agency heads to report periodically to the BoB "on progress made in establishing management improvement programs and the results achieved therefrom." 37/ In January 1950, BoB moved to support the Executive Order by issuing Circular A-8 on "Agency Responsibility Under the President's Management Program" which, among other things, authorized the Bureau to evaluate agency review systems and the adequacy of actions taken to achieve potential management improvements. 38/

Eisenhower: 1952-1960

BoB's institutional capacity to support President Truman's management improvement initiatives, however, was limited by continued reductions in the size of its professional management staff. 39/ Moreover, the long-term significance of the first Hoover Commission report lay in its recommendations for a thoroughgoing reorganization of the executive branch of government, including the units of the

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36/ Mosher, Tale of Two Agencies, p. 105.

37/ Executive Order 10072 also created a twelve-member President's Advisory Committee on Management Improvement (composed of both federal officials and private citizens) to assist the President in developing a government-wide program for management improvement. The Advisory Committee submitted its final report to President Truman in December 1952, concluding -- in an oft-cited phrase -- that there was "no single, sure-fire, and practicable panacea to guarantee the improvement of management in the Federal Government." U.S. President. President's Advisory Committee on Management. Report to the President. December, 1952. p. 18.

38/ Marver Bernstein has offered the following, less-than-sanguine assessment of the effects of Circular A-8: "Thus was started the flow of paper from management analysts in the agencies to the Bureau that proved to be essentially worthless in meeting the objectives of stimulating aggressive efforts to improve administrative performance." Bernstein, Presidency and Management Improvement, p. 507.

39/ See footnote 35 above.

Executive Office of the President (EOP). Although the Commission itself did not support the proposal of its task force on budget and accounting that the Estimates, Fiscal, and Administrative Management Divisions of the BoB be merged, it did propose that budget reviews be conducted "from first to the final stages in conjunction with representatives of . . . Administrative Management." 40/ The report thus lent additional momentum to the arguments of those within the BoB who had expressed misgivings about the agency's functional scheme of organization and helped pave the way for a general reorganization of the Bureau, ordered by Director Frederick J. Lawton in March of 1952, which resulted in the elimination of the Division of Administrative Management and its replacement by a much smaller Office of Management and Organization (OMO).

The general effect of this 1952 reorganization was to tilt BoB back towards the budget side of its responsibilities, and the agency's capacity to direct management-improvement efforts suffered as a result. 41/ Most of the professional "M" staff from the Division of Administrative Management was transferred into management units within four major program areas, assigned to work side by side with the budget examiners. And although the central management staff assigned to OMO retained a broad mission in theory -- Mosher reports that this office was charged "to provide leadership on larger managerial questions of government-wide organization, interagency relationships, and common administrative problems such as procurement, work measurement, transportation and travel, and others" 42/ -- the importance of their work declined during the Eisenhower Administration, which was considerably more interested in promoting economy than in stimulating improved management capabilities. 43/

From 1953 to 1959, the BoB leadership consisted mainly of bankers and accountants, and "special attention to management improvement was discontinued." 44/ The subordination of "management" to "budget" within BoB during the Eisenhower era did not, however, go uncriticized.

40/ U.S. Congress. Commission on Organization of the Executive Branch of Government. Report on Budgeting and Accounting. February, 1949. 81st Cong., 1st Sess., p. 23.

41/ Mosher notes that "However effective the 1952 shift was in meeting [many of its objectives], some of those then involved in management work look back on it as a disaster." Mosher, Tale of Two Agencies, p. 107.

42/ Ibid., p. 106-107.

43/ See: Bernstein, Presidency and Management Improvement, p. 509. Also: Mosher, Tale of Two Agencies, p. 108.

44/ Bernstein, Presidency and Management Improvement, p. 509.

In 1955, for example, the second Commission on the Organization of the Executive Branch (second Hoover Commission) recommended that BoB's management staff and responsibilities be substantially enlarged. 45/ Later, between 1957-1959, the President's Advisory Committee on Government Organization (PACGO), which President Eisenhower had set up early in his first term, made a series of proposals designed to strengthen the President in his managerial role. 46/ Each of these proposals reflected the conviction of PACGO's chairman, Nelson Rockefeller (then Under Secretary of HEW), that BoB "would not be able to provide leadership in management improvement because of its preoccupation with budget analysis and budget cutting." 47/

The Rockefeller Commission (PACGO) made three discrete proposals to strengthen central institutional capacity to foster management improvement:

> Proposal #1 (January 1957): Create a director and an office of administration whose jurisdiction would comprehend all managerial responsibilities of the EOP, including those of the BoB. However, BoB Director Brundage objected to the proposal on the grounds that it would interpose a new layer between the Bureau, its Director, and the President.
>
> Proposal #2 (October 1957): Establish an "Assistant to the President for Management". This proposal was opposed on the same grounds as the first.
>
> Proposal #3 (mid-1958): Create an "Office of Executive Management" out of a reorganized BoB and assign a higher priority to management functions. Unlike the previous two proposals, this one did not imply the interposition of a new layer between the Bureau and the President. It had, in fact, been recommended by new BoB Director Maurice Stans. However, the proposed reorganization was "vigorously resisted" by the head of OMO, and no change came to pass. 48/

45/ The Second Hoover Commission's task force on budgeting and accounting in fact recommended that the title of the bureau be changed to the Office of Budget and Executive Management, but this proposal was not endorsed by the full Commission. See: Mosher, Tale of Two Agencies, p. 107-108.

46/ The Budget Bureau's OMO provided both the Second Hoover Commission and PACGO with "information, analytic help, and other services." Ibid., p. 107.

47/ Bernstein, Presidency and Management Improvement, p. 510.

48/ Mosher, Tale of Two Agencies, p. 108.

Toward the end of the Eisenhower Administration, in 1959, "perhaps partly as a defense against PACGO proposals and criticisms," 49/ BoB's Director Stans ordered a self-study of the Bureau's management capacity. The study was undertaken by 11 veteran BoB staffers who issued a 149-page report which, while urging nothing very specific, called upon the Bureau to "lift its sights from the details of agency operations and develop new devices of management which focus upon meaningful, critical factors" and to be guided by "broader principles of management review and control." 50/ No significant change in the activities or size of OMO (which consisted of about 30 people or roughly 10 percent of the BoB staff) resulted from this study. However, in 1959 the Bureau did appoint a new Interagency Council on Management Improvement to advise it on the improvement of federal management.

JFK-LBJ: 1960-1968

The pattern of the Eisenhower years was repeated during the Kennedy and Johnson Administrations. Neither President appeared to be very interested in issues of organization and management; their dominant concern as Presidents was "new ideas, new policies, new programs, and politics, not implementation and mechanics." 51/ According to Schick, throughout the 1960s, "as traditional concerns of administrative management receded from presidential attention, the administrative experts in the Bureau were left without a White House interest in their services." 52/

It should be noted that during this period of "activist" presidencies, allegations about BoB's "negativism" grew; the ideology or doctrine of "neutral competence", and the allied notion that BoB exists to serve the institution of "the Presidency" rather than any individual president, was called into question. In part, as a consequence, BoB's management role shrunk in importance and its assignments and concerns became more technical and narrow. From 1961-1963, for example, BoB's Office of Management and Organization (OMO) focused its "limited resources" on automatic data processing, work measurement, cost reduction, and manpower utilization. 53/ "In the

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49/ Ibid.

50/ "Report to the Director: A Self-Study of the Bureau of the Budget." May 1, 1959. p. 6. Cited in: Berman, Larry. The Office of Management and Budget That Almost Wasn't. Political Science Quarterly, v. 92, no. 2, Summer 1977. p. 288.

51/ Mosher, Tale of Two Agencies, p. 108.

52/ Schick, The Budget Bureau That Was, p. 530.

53/ Bernstein, Presidency and Management Improvement, p. 512.

Johnson Administration, these concerns were followed by productivity measurement and the 'war on waste,' an updated model of cost reduction, and the introduction of PPBS (planning-programming-budgeting systems) throughout the Executive Branch." 54/ Because it is often regarded as the first in a series of innovative budget-related management "tools" or strategies to which recent Presidents have resorted, a brief discussion of PPBS is warranted at this juncture.

Widely heralded as a successful innovation in the Department of Defense under Secretary Robert McNamara in the early- and mid-1960s, where it was "initiated basically as a device to relate. . . military plans to the budget" 55/, PPBS was introduced government-wide with the broad aim of "recast[ing] federal budgeting from a repetitive process for financing permanent bureaucracies into an instrument for deciding the purposes and programs of government." 56/ This was to be accomplished by requiring federal departments and agencies to go through an evaluation process that involved several stages. The first, or planning stage, was to determine governmental goals or objectives in a given area as precisely as possible; the second, or programming stage, involved the identification and comparative appraisal (on the basis of cost-benefit estimates projected into the future) of alternative means -- i.e., programs -- for achieving those objectives; at the subsequent or budgeting stage, the "best" option emerging from this process of program analysis was to be translated into a budget, whereupon the program and budget would be implemented and the results of implementation assessed (again in cost-benefit terms) so that the process might begin anew. 57/ In announcing that he had ordered it installed in 21 federal agencies on August 25, 1965, President Johnson proclaimed PPB "a very new and revolutionary system of budgeting" 58/ that promised to alter the allocation of resources in a more productive fashion and generate the kind of self-correcting analyses deemed necessary to eliminate inefficiences in governmental programs. Budget Bureau Director Charles L. Schultze was instructed to supervise the undertaking, and a small and briefly influential Central Evaluation Office (housing a

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54/ Ibid.

55/ Mosher, Tale of Two Agencies, p. 123.

56/ Schick, Allen. A Death in the Bureacuracy: The Demise of Federal PPB. Public Administration Review, v. 33, March/April, 1973. p. 146.

57/ This (necessarily sketchy) overview of the steps involved in PPBS is drawn from: Mosher, Tale of Two Agencies, p. 123-124.

58/ Cited in: Wildavsky, Aaron. The Politics of the Budgeting Process. 4th ed. Boston, Little, Brown and Company, 1984. p. 186.

professional staff of between 12-20) was created within BoB to monitor the efforts of some 350 economists and program analysts who were assigned to install the PPB system in the civilian agencies. 59/

The introduction of PPBS is generally regarded as having added "a significant new dimension of public budgeting" in that it called attention to the importance of the outcomes and effects of programs and their relationship to costs. 60/ But there is also widespread agreement that PPBS as a system failed for a variety of reasons, both practical and conceptual, 61/ and that its ultimate effect on budgetary decision-making was marginal at best. In addition to its own generic or 'design' limitations, 62/ the effectiveness of the system was substantially impeded by a number of political problems. According to Randall, President Johnson's "dedication to PPB as a management tool for program development and implementation was suspect from the very beginning." 63/ The same may be said for many in the Bureau of the Budget. Although the BoB was designated as the lead agency for PPBS, "there appears to have been quiet resistance to it as a new method of budgeting" 64/ on the part of the Bureau's professional staff. This resistance was reflected in the fact that "For all its preaching about an integrated planning and budgeting system, the Budget Bureau steadfastly kept the two apart, quarantining its ... PPB operation from the powerful examinations and budget review staffs, and promulgating separate PPB and budget instructions." 65/ The fact that PPBS was not enthusiastically endorsed by many BoB staffers, however, did little to appease the numerous agency officials who reportedly resented the Bureau's orders "to graft an alien, standardized system on their regular budget process":

59/ The 350 figure is drawn from: Rose, Richard. Managing Presidential Objectives. New York, The Free Press, 1976. p. 68.

60/ Mosher, Tale of Two Agencies, p. 125.

61/ For a thorough going attack on both the theory and practice of PPBS, see: Wildavsky, Politics of the Budgetary Process, p. 186-202.

62/ Mosher has suggested, for example, that PPBS' "intended linkage of plans and programs with budgets on an annual basis was simply impracticable; there was not enough time." Mosher, Tale of Two Agencies, p. 125.

63/ Randall, Ronald. Presidential Use of Management Tools: From PPB to ZZB. Presidential Studies Quarterly, v. 12, spring 1982. p. 187.

64/ Mosher, Tale of Two Agencies, p. 124.

65/ Schick, Demise of Federal PPB, p. 148.

> From the vantage point of the departments, PPB was something manufactured by and for the use of the Budget Bureau. The departments did not have an opportunity to design their own systems or procedures, nor were they able to relate PPB to their established budgetary practices. ... Faced with an imposed system which they neither designed nor understood, many departments reacted by divorcing the PPB system from budgeting. 66/

As a consequence, as Randall has noted, "the task of developing those goals and objectives around which program structures were to be built was relegated to ever lower levels of the agencies." 67/

The results of all this were predictable: although certain features of the concept can be said to have retained their vitality over the long haul, 68/ the efforts of the Johnson Administration to implement PPBS on a government-wide basis essentially came to naught. To cite Randall again: "Without policy direction from the top, nothing changed except the form in which the budget was presented. Instead of using program budgeting as a tool to redirect agency programs. . . , bureaucrats used the system to identify their present goals and to fit on-going programs to these goals." 69/ Recognition of PPBS' limitations evidently preceded its formal abandonment during President Nixon's first term in office. 70/

Due in no small measure to the fact that the agency was obliged to concerntrate first on various cost-saving efforts and subsequently on implementation of PPBS, the larger, traditional concerns of administrative management languished at BoB during the Johnson Administration. Critics have suggested that President Johnson "devoted virtually no attention to administrative requirements or to the problems entailed in governmental expansion as a result of the

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66/ Ibid.

67/ Randall, Presidential Use of Management Tools, p. 188.

68/ Mosher has suggested that "The basic element of PPBS that did not die was its focus on results and outcome (rather than, or in addition to, resources and means), on the analysis of policies and programs to attain such results, and on the evaluation of the effectiveness of ongoing programs." Mosher, Tale of Two Agencies, p. 126.

69/ Randall, Presidential Use of Management Tools, p. 188.

70/ PPB's "death notice" was conveyed on June 21, 1971, in a memorandum accompanying OMB Circular A-11.

Great Society programs", 71/ and this was reflected in the President's notable failure to draw on the institutional resources and memory of BoB's management arm in designing those programs. 72/ An ironic consequence of this neglect was that the Bureau's Office of Management and Organization "did not successfully make the transition to the new administrative problems that were reaching the President's desk. These pertained to the management of programs that were cutting across departmental and governmental lines." 73/ There were, to be sure, other significant obstacles to OMO's assumption of an active role in this context. Schick has noted, for example, that in the early and mid-1960s Congress repeatedly rejected proposals to re-establish a BoB management field service, which might have enabled OMO to work more effectively with state and local governments as well as federal agency field offices. 74/ Moreover, the general reluctance of the agencies, now with their own management staffs, to bow to BoB directives (as the PPBS experience attested) was bound to be all the more difficult to overcome given the "high political stakes" involved in interdepartmental and intergovernmental problem-solving arrangements. 75/

The combination of all these factors left the Johnson Administration exposed to the criticism that its new domestic programs had been launched without necessary forethought to their administrative implications. This theme figured prominently in the June 1967 report of the President's Task Force on Government Organization (the Heinemann report) which, while rejecting "political" criticisms of the Great Society, was "vigorously critical" of the management of domestic social programs. 76/

71/ Newland, Chester A. Executive Office Policy Apparatus: Enforcing the Reagan Agenda. In Salamon, Lester M. and Michael S. Lund, eds. The Reagan Administration and the Governing of America. Washington, The Urban Institute, 1984. p. 139.

72/ Mosher has noted that: "[D]uring much of the hyperactivity of the Great Society period, BoB's management arm was bypassed, and management considerations were widely and unfortunately neglected." Mosher, Tale of Two Agencies, p. 109. In designing the legislative programs of the Great Society, President Johnson relied primarily on myriad White House task forces whose staffs were usually cut off from the BoB and the line departments.

73/ Schick, The Budget Bureau That Was, p. 530.

74/ Ibid. A legacy of the Smith era, BoB's management field service had been abolished in 1953, one year after the internal reorganization that had produced OMO.

75/ Ibid.

76/ Mosher, Tale of Two Agencies, p. 109.

The Heinemann report, which was never made public by the Johnson Administration, cited a number of problems, including, most saliently: (1) fragmentation and lack of coordination among agencies in Washington and in the field; (2) the lack of an institutional staff to evaluate existing programs and to anticipate, study, and plan ahead; (3) the lack of channels of communication between Washington, governors, and mayors; (4) the overcentralization of decisionmaking power in Washington; and (5) lack of common centers and boundaries of field organizations in the various departments and agencies concerned with related domestic programs. 77/

Similar conclusions were also reached by a BoB self-study group in 1967 near the end of the Johnson Administration. The self study report, issued in July 1967 (one month after the Heinemann report was submitted to President Johnson), acknowledged that "the inter-agency-intergovernmental nature of much of the recent social and economic legislation has brought with it unprecedented problems in the organization and management of the executive branch" and that OMO -- a "depressed area within the Bureau" -- was not equal to the challenge of effectively and efficiently discharging the BOB's management responsibilities. 78/ The Steering Group which conducted the study found that BOB was experiencing difficulty attracting and retaining capable management personnel (OMO had about 40 full-time analysts in 1965) and that line agencies had "moved well ahead of the Bureau in organization and management." 79/

Since several of the ideas advanced by the Heinemann Task Force and the BoB Steering Group were to reemerge in the thinking behind the reorganization of BoB into OMB in 1970, and subsequent discussions of OMB's role in management improvement, it is appropriate to briefly summarize them.

The Heinemann Task Force called for: 1) the creation of a new Office of Program Coordination (OPC) in the Executive Office of the President but outside BoB to institutionalize responsibility for program coordination (this was cited as the "greatest unmet need" of the President's managerial responsibilities); and 2) the creation of an office of program development in a reorganized BoB to assist the White House staff in the program development process as well as problem definition and program design.

The BoB Steering Group recommended that OMO be replaced with a new Office of Executive Management (OEM), which would have major

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77/ Ibid.

78/ U.S. Bureau of the Budget. The Work of the Steering Group on Evaluation of the Bureau of the Budget. July, 1957. p.

79/ Ibid.

responsibilities for: the improvement of government organization structure; systems design, with an emphasis on interagency and intergovernmental programs like grant simplification and consolidation, and the realignment of field services; operational coordination; the development of accounting systems; and special government-wide projects.

President Johnson's reluctance to act on the Heinemann recommendations "presented the Budget Bureau with the opportunity to fend off . . . outside reorganization efforts by upgrading its management function." 80/ In August 1967, President Johnson's BOB Director, Charles L. Schultze, following the proposal made by the Bureau's Steering Group, replaced OMO with a new Office of Executive Management under the leadership of a noncareer Assistant Director of the Budget. The efforts of the new OEM were "directed primarily to the federal field establishments and their relationships to state and local governments." 81/ The new, "rejuvenated" staff (49 full-time "M" analysts were active in 1970) launched an ambitious Federal Assistance Review (FAR) program "involving common centers and boundaries of departmental regions, grant simplification, decentralization, federal regional councils," and several other changes related to intergovernmental grants management. 82/ Over the next few years (on into the early Nixon era) the FAR initiative proved to be what Mosher has characterized as "the most effective program of innovation in the field of management that the BOB/OMB had undertaken since the 1940s." 83/

Nixon I: 1968-1970

The Kennedy-Johnson era ended in 1968 with the election of Richard Nixon to the Presidency. More than any of its recent predecessors, the Nixon Administration focused on management as a tool of governance. In its first months in office, the administration moved quickly to define a broad agenda of management concerns. To focus this effort, President Nixon announced the formation on April 6, 1969, of an Advisory Council on Executive Reorganization chaired by the industrialist Roy Ash. 84/ After several months of

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80/ Berman, The Office of Management and Budget That Almost Wasn't, p. 294.

81/ Mosher, A Tale of Two Agencies, p. 111.

82/ Ibid.

83/ Ibid.

84/ The Council membership was drawn almost exclusively from the ranks of private businessmen. Only one of the six members -- John Connally -- had a background that included government service.

deliberations, the Ash Council (as it came to be known) recommended to President Nixon that: (1) certain domestic departments and agencies be abolished or consolidated under four new, larger departments based on function; and (2) the EOP be reorganized by establishing a new White House unit (a Domestic Policy Council) responsible for the coordination of major policy initiatives and by restructuring the BoB with a view to expanding the agency's management role. With respect to the last of these proposals, Mosher has noted that: "The Council call[ed] for the creation of an office of executive management [OEM] to encompass the Bureau of the Budget and serve in a variety of ways as the president's chief management arm. The Council envisaged a new organization with a charter encompassing but going well beyond the bureau's emphasis on the budget ...." 85/ The proposed change would add major new managerial responsibilities to BoB's mission, including program evaluation and coordination, organization and management improvement, information and management systems, and development of executive branch talent for the departments and agencies.

The Ash Council's recommendations served as the basis for legislative proposals that President Nixon forwarded to Congress on March 12, 1970. Over the next few weeks, hearings were held on the President's proposal to create four new "super departments" -- Human Resources, Community Development, Natural Resources, and Economic Affairs -- but this initiative was not warmly received on Capitol Hill. However, the second major proposal, Reorganization Plan No. 2, providing for the creation of a White House Domestic Council and the establishment of the Office of Management and Budget 86/, was accepted by Congress after considerable debate. 87/

The rationale underlying this new arrangement was explained in the President's Message to Congress accompanying Reorganization Plan No. 2 in the following terms: "The Domestic Council will be primarily concerned with what we do; the Office of Management and Budget will be primarily concerned with how we do it, and how well we do it." 88/ President Nixon emphasized that:

85/ Mosher, Tale of Two Agencies, p. 112.

86/ The name initially proposed for the new agency (Office of Executive Management) was changed out of deference to certain congressmen and BoB career staffers, who wanted the word "Budget" retained in the title.

87/ For background on the political maneuvering surrounding congressional consideration of Reorganization Plan No. 2, consult: Berman, The Office of Management and Budget that Almost Wasn't, p. 299-301.

88/ Congressional Record, March 12, 1970.

> The creation of the Office of Management and Budget represents far more than a mere change of name for the Bureau of the Budget. It represents a basic change in concept and emphasis, reflecting the broader management needs of the Office of the President. The new office will still perform the key function of assisting the President in the preparation of the annual Federal budget and overseeing its execution. ... But preparation of the budget as such will not be its dominant, overriding concern. 89/

The ultimate objective underlying the proposal to transform BOB into OMB -- "improving the management of the entire Executive Branch" 90/ -- was consistent with that which had informed several earlier Nixon administration initiatives. In February 1970, for example, President Nixon had established an Advisory Council on Management Improvement, also chaired by Roy Ash, to define and coordinate an agenda for management improvement. 91/ Also, in the same month, BOB Director Robert Mayo had issued a revised Circular A-44, establishing a formal government-wide management improvement program. The circular directed agency heads to undertake systematic reviews of programs in order to identify "persistent problems of high level priority" and to file annual management improvement reports. 92/

From OMB to OmB: 1970 - Present

Nixon II: 1970-1974

On July 1, 1970, Reorganization Plan No. 2 went into effect, with BoB officially reconstituted as OMB. George Schultz was appointed Director of the agency, while Caspar Weinberger assumed the position of Deputy Director. Shortly thereafter, an internal reorganization of the agency was undertaken. What emerged has been termed a "bifurcated" structure, with Weinberger heading up all the budget

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89/ Ibid.

90/ President Nixon suggested that "Improving the management process of the President's own office" was a "key element" in achieving this end. Ibid.

91/ Executive Order 11509, Establishing the President's Agency Council on Management Improvement, Feburary 11, 1970.

92/ BoB, Circular Revised A-44, Establishment of a Management Improvement Program Applicable to All Government Operations, February 16, 1970.

activities and an associate director in charge of all the rest of the agency's functions under the general heading of "management." Included under the management arm were the following divisions: Organization and Management Systems; Program Coordination; Executive Development-Labor Relations; Statistical Policy and Management of Information Systems; and Legislative Reference. According to Richard Rose, this reorganization resulted in a substantial increase (to 146) in the size of OMB's professional management staff. 93/

The various internal steps taken early on to enhance the "management" side of OMB's operations seemed altogether in keeping with the stated purpose of the 1970 reorganization plan. In short order, however, some fundamental flaws in the entire scheme put in place by Reorganization Plan No. 2 became evident. Indeed, as Mosher has pointed out:

> It is ironic that the effects of all these changes in 1970 were peversely opposite to the professed intent of their initiators. Schultz, first director of OMB, took an office in the White House and became a principal adviser to the president on policy matters. [John] Erlichman, first director of the Domestic Council, was soon immersed in operating problems and calling on individual members of the OMB staff for assistance. Furthermore, while "management" was given a place, indeed first place, in the title of what had been the Bureau of the Budget and was separated from, and given a status nearly equal to, the budget on the organization chart, its importance in OMB's work declined, though with some interruptions, for at least the following seven years. 94/

Because it had some important long-term ramifications for the "management" role of OMB and the effectiveness of its management-improvement efforts in the post-Nixon era, the implications of the transformation described by Mosher merit more detailed exploration.

One significant tendency set in motion at this time was for leadership in the "management" sphere to gravitate from OMB to the White House. As envisaged in President Nixon's message to Congress accompanying Reorganization Plan No. 2, the respective functions of the Domestic Council and OMB "followed traditional public administration notions: policymaking was political and belonged in the Domestic

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93/ Rose, Managing Presidential Objectives, p. 67. It is not clear which of the above-mentioned divisions are included in Rose's definition of OMB's professional management corps.

94/ Mosher, Tale of Two Agencies, p. 113.

Council, management was non-political and belonged in OMB." 95/ In fact, however, there are strong indications that, already by 1970, President Nixon and his closest advisers had begun to suspect that the politics-administration dichotomy on which this assignment of functions had ostensibly been predicated was both unworkable and insufficient to ensure the realization of the administration's objectives. By mid-way through his first term in office, the President (and more especially presidential assistant John Erlichman) had set out to lay the groundwork for the implementation of what Richard P. Nathan has termed an "administrative presidency" strategy. 96/ The "basic premise" underlying this strategy, according to Nathan, is that "management tasks can and should be performed by partisans." 97/

The administrative presidency strategy, which only began to take firm hold in President Nixon's second term in office, was born of a frustration with the failure to change the direction and priorities of domestic social programs through legislative action, and the proposition that management tasks ought to be performed by "partisans" had special implications with respect to the appointment of Cabinet and sub-cabinet officials to those agencies. But the hostility towards the civil service that prompted the effort to place trusted political lieutenants in positions to manage key elements of the bureaucracy "was also reflected in a suspicion in the early days [of the Nixon Administration about the loyalty] of the career staff" in BoB/OMB. 98/ That suspicion, Nathan reports, "was not dispelled until George Schultz replaced Nixon's first Budget Director, Robert Mayo, who was regarded by the White House as too strong a defender of the Bureau's professionalism." 99/ The ultimate objective underlying the administrative presidency strategy -- gaining control over agency policy and managerial processes -- was thought to necessitate a change in the "non-political" conception of OMB's function as a repository of

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95/ Moe, Terry. The Politicized Presidency. In Chubb, John and Paul Peterson, eds. The New Direction in American Politics. Washington, The Brookings Institution, 1985. p. 256.

96/ Nathan has treated the "administrative presidency" concept extensively in two books: The Plot That Failed: Nixon and the Administrative Presidency. New York, John Wiley & Sons, 1975; and, The Administrative Presidency. New York, John Wiley & Sons, 1983.

97/ Nathan, The Administrative Presidency, p. 7.

98/ Ibid., p. 9.

99/ Ibid.

"neutral competence." 100/ But Mayo's "lack of experience in political matters made it difficult for him to build confidence in the bureau on the part of the President" and more especially John Erlichman, who (according to Nathan) was responsible for engineering Mayo's removal. 101/

The appointment of Schlutz to the OMB directorship, his subsequent assumption of an office in the White House, and Erlichman's drafting of OMB career staffers into Domestic Council operations may all be seen as part of an effort to make OMB more responsive to the objectives of the Nixon administration as well as a more effective instrument in overcoming the program interests that were perceived to be opposed to what the administration was trying to accomplish. The blurring of the boundaries between "policymaking" (supposedly a Domestic Council function) and "management" (presumably the exclusive province of OMB) that resulted from these actions may appear "ironic" from the original Ash Council perspective, but it evidently served the immediate purposes of the Nixon administration well. For sometime in 1971, Nathan reports, President Nixon "came to the conclusion

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100/ The leading account of the concept of "neutral competence" is: Hugh Heclo. OMB and the Presidency -- the Problem of Neutral Competence. Public Interest, v. 3, Winter 1975, p. 81-98. In this article, Heclo notes that historically, "neutral competence":

> envisions a continuous, uncommitted facility at the disposal of, and for the support of, political leadership. It is not a prescription for sainthood. Neutrality does not mean the possession of a direct-dial line to some overarching, non-partisan sense of the public interest. Rather it consists in giving one's cooperation and best independent judgment of the issues to partisan bosses -- and of being sufficiently uncommitted to be able to do for a succession of partisan leaders. The independence entailed in neutral competence does not exist for its own sake; it exists precisely in order to serve the aims of elected partisan leadership. Nor is neutral competence merely the capacity to deliver good staff work to a political superior, for a major part of this competence lies in its ability to gain compliance from lower-level officials. The competence in question entails not just following orders but having the practical knowledge of government and the broker's skills of the governmental marketplace that makes one's advice worthy of attention. Thus neutral competence is a strange amalgam of loyalty that argues back, partisanship that shifts with the changing partisans, independence that depends on others. Its motto is "Speak out, shut up, carry up, carry out." (p. 81-82.)

101/ Nathan, The Administrative Presidency, p. 9, footnote 18.

that in many areas of government, particular domestic affairs, operations is policy. Many day-to-day management tasks for domestic programs -- for example, regulation writing, grant approval, and budget apportionment -- are substantive and therefore involve policy." 102/ In order to help penetrate effectively into agency programs and policies to ensure conformity with the Nixon administration's objectives, therefore, it was important that OMB be actively involved in both the "management" and "policy" spheres.

As the administrative presidency strategy unfolded in President Nixon's second term, OMB officials assumed a pivotal role in its implementation. According to Harold Seidman, for example, "Politically endorsed appointees recruited by the Deputy Director of OMB and operating under his general supervision replaced Departmental Assistant Secretaries for Administration, most of whom had been in the career civil service. Assistant Secretaries of Administration with their control of budgets, management services, and personnel, were regarded as potentially powerful instruments of control - 'an instant bush telegraph into the jungle.'" 103/

The twin objective of making OMB more responsive to White House directives and ensuring it's effective penetration into both the "policy-making" and "managerial" dimensions of agency activities appears to have provided much of the incentive for an internal reorganization of OMB ordered by Roy Ash, Schultz's successor as Director, and Deputy Director Frederick Malek in 1973. This 1973 reorganization had two central purposes. First, it changed the agency's internal structure by merging the previously-separated management and budgetary functions and staff. Second, it introduced new, politically-appointed Program Assistant Directors (PADs) to preside over the four new program areas (National Security and International Affairs, Human and Community Affairs, Economics and Government, and Natural Resources, Energy, and Sciences). This change added a new layer between the OMB Director (and Deputy Director) and the career management staff.

The 1973 reorganization had several significant effects. Under the 1970 reorganization, OMB had started out with a bifurcated structure with separate budget and management branches. However, the administration's view about this arrangement changed and some reshuffling became necessary. As Malek put it at the time: "Our feeling is that management and budget are one and the same tool

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102/ Ibid., p. 45.

103/ Seidman, Harold. Politics, Position, and Power: The Dynamics of Federal Organization. 2d ed. New York, Oxford University Press, 1975. p. 117-118.

of management and that it was important to integrate them." 104/ To give institutional form to this idea, OMB's organizational structure was changed by eliminating the dual chain of command and consolidating activities under four associate directors (PADs) with direct line authority. According to Mosher, however, the change thus effected had some serious and negative long-term implications for the agency's management capacity:

> Unaware of the unhappy consequences of the reorganization of 1952, [Ash and Malek] in effect did it all over again, integrating management personnel into management divisions, one for each of the four main program areas, alongside the examiners. ... The names of these units were subsequently [under the Carter Administration] changed to special studies divisions, and they were assigned miscellaneous tasks, usually associated with the budget. Their management functions gradually evaporated. 105/

Perhaps the most lasting legacy of the 1973 reform, however, was the introduction of the Program Assistant Directors (PADs). In retrospect, it is perhaps all too easy to attribute the addition of the PADs to OMB's structure to the narrowly partisan objectives of the Nixon Administration, which (in its early days, at any rate) tended to view the agency as "neither staffed by individuals known to be loyal to the President nor effectively oriented to the political-policy role." 106/ In fact, however, dating back to 1959, some careerists within BoB had recommended the use of political appointees in line guidance over some program areas. 107/ And later, in 1967, a BoB self-study acknowledged that the Bureau had suffered for its lack of "political people" and that the career staff often seemed "naive politically and persist[ed] doggedly on a completely unrealistic point." 108/ In other words, suggestions that BoB/OMB was insufficiently "responsive" to political considerations, and that this problem might be redressed by having non-career Assistant

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104/ Cited in: Walsh, John. Office of Management and Budget: New Accent on the "M" in OMB. Science, v. 183, January 25, 1974. p. 287.

105/ Mosher, Tale of Two Agencies, p. 113-114.

106/ Berman, Office of Management and Budget and the Presidency, p. 118.

107/ Report to the Director: A Self-Study of the Bureau of the Budget. May 1, 1959. p. 107.

108/ Cited in: Berman, Office of Management and Budget and the Presidency, p. 120.

Directors appointed to oversee certain agency operations, had been heard for some time prior to 1973. However, even those who favored such a step had repeatedly warned, as the 1959 study group put it, that "assignments to such assistants must not be allowed to obscure the direct line of direction and reporting between the Director/Deputy Director team and the Office and Division heads." 109/ This, however, is precisely what happened over the ensuing years.

During the past decade or so, the PADs have been widely criticized for contributing to a "politicization" of OMB's function and a decline in the agency's effectiveness as a source of institutional memory about government budgeting and organization and management issues. Berman, for example, has observed that: "Critics charge that the Pads are too political, possess too little program knowledge, remain in OMB too short a time to obtain that program knowledge, do not trust careerists, and, by handling the political interface which the Director used to handle, have eroded the independence of division chiefs and the decision-role of the Director." 110/ A 1976 NAPA panel sounded much the same theme. Noting that the "OMB staff's professional judgment on how best to achieve presidential objectives [had] been seriously politicized through the political overlay at the assistant director level", it urged that this "politicizing" effect be eliminated. 111/ Further evidence that the PADs were hardly a welcome addition to the OMB structure was provided in surveys of OMB staffers conducted in the mid- to late-1970s: in one poll, 50% of the respondents expressing an opinion on the issue believed that the PADs downgraded the contribution made by career officials; in another, 53% suggested that OMB had become more "politicized" in its work as a result of the PADs. 112/

Although it may have had the most significant long-term effects, the introduction of the PADs was but one among a number of steps taken by the Nixon Administration in 1973 to reshape OMB. The creation of the new management divisions by means of the reorganization of that year was part and parcel of a larger attempt to redefine and reorient the agency's management function. At about the same time as that reorganization went through, a number of functions deemed "administrative details," along with the personnel who performed

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109/ A Self-Study of the Bureau of the Budget, p. 107.

110/ Berman, Office of Management and Budget and the Presidency, p. 118.

111/ National Academy of Public Administration. The Presidency and Executive Management: Summary of a Symposium. Washington, November 1976. p. 19

112/ Berman, Office of Management and Budget and the Presidency, p. 119, 121.

them, were transferred from OMB to the General Services Administration (GSA). These included activities related to procurement policy, travel regulations, and property management, and some in automatic data processing, financial management, grant simplification, and management systems. Mosher has noted that "these responsibilities were never fully assimilated within GSA, and their transfer aroused vehement protests among some members of Congress." 113/ Although within a few years (by early 1976) most of these functions were returned to OMB 114/, the transfer of management personnel to GSA, coming as it did on the heels of the creation of the new management divisions, raised suspisions in various quarters: "Some observers believed that the purpose behind both these actions ... was to provide vacant positions in OMB that could be filled by persons responsive to the new OMB leadership." 115/

That this was indeed the principal objective underlying these actions became evident when, later in 1973, OMB Director Ash and Deputy Director Malek announced the launching of a new "Management by Objectives" (MBO) system for the executive branch and began a campaign to recruit management consultants and other business school graduates (MBAs) to join OMB as "management associates" to oversee its implementation. 116/ As noted earlier, Ash and Malek held the view that "management and budget are one and the same tool of management" and hence ought to integrated 117/, and the immediate purpose of the MBO initiative was to stimulate the agencies to develop specific management "objectives" as part of the annual budget process. 118/ However, according to Richard Rose, in introducing MBO Ash and Malek had a larger set of objectives in view:

113/ Mosher, Tale of Two Agencies, p. 114.

114/ Mosher observes that these functions and the personnel responsible for them "did not receive a very warm welcome" when they were transferred back to OMB. Ibid.

115/ Ibid.

116/ Richard Rose, in any event, has suggested that the changes introduced in 1973 were directly linked to the MBO effect: "By internal reorganization within OMB, Malek created 30 posts for management associates to introduce and monitor MBO." Rose, Managing Presidential Objectives, p. 67.

117/ See footnote 107 above.

118/ This process had already been applied on a test-run basis in HEW beginning in 1970. See: Rose, Managing Presidential Objectives, p. 63-66.

> Management by objectives was the final effort of the Nixon Administration to strengthen the President's direction of the federal executive. ... [It was intended] to stimulate top down directives from Presidential appointees to ensure that career officials were responsive and effective in carrying out the Administration's work. It was also meant to improve the effectiveness of government by concentrating attention upon results. ... The Nixon innovators did not see this new technique as a mere management tool, but rather as a way of coming to grips with central problems of political direction and government performance. 119/

Part of the appeal of management-by-objectives evidently lay in the fact that it was a technique that might be applied across the board in the federal government to influence a large number of agency programs and operations simultaneously. Rose has noted that: "In the minimal sense of the term, there is no doubt that [MBO] was implemented in the federal government. ... Each of 21 major federal agencies ... within a year established its own MBO staff. Within five months of the initial presidential announcement [of the launching of the program], the White House received 237 objectives filed for fiscal year 1974, and ... the second year's cycle produced another catalogue of more than 225 objectives." 120/

In Rose's view and that of numerous other observers, however, the flurry of activity associated with the MBO effort concealed some serious problems in the program as implemented. In the first place, OMB refused to lay down elaborate specifications regarding agencies' identification of objectives, so the objectives submitted varied greatly in clarity and in logic: "[T]he OMB request for objectives were sent down the line to bureau chiefs and program managers, who in turn sent back statements concentrating attention upon their immediate organizational concerns. In effect, the top-down White House call for objectives became a bottom-up catalogue of bureau chief concerns." 121/ In the second place, the Administration failed to sustain the effort: "Management by objectives began to run into trouble within months after its launching, for its sponsors began to lose interest in it. The loss of interest was signalled from the top by the frequent cancellation of periodic meetings between OMB directors and agency heads to discuss progress toward their objectives." 122/ However, according to Rose:

119/ Ibid., p. 58

120/ Ibid., p. 67.

121/ Ibid., p. 67-68.

122/ Ibid., p. 68.

> The best explanation for the loss of OMB interest in [MBO] is their discovery that it was only an apolitical reform. .... The objectives [submitted] were noncontroversial, because they referred to consensual aims such as the preparation of a report on a given date without any committment as to content; the implementation of a new act of Congress that was their responsibility to fulfill; or actions that had low likelihood of causing protest by politically active groups. The absence of controversy made such objectives safe for bureaucrats to present to political superiors. But it also meant that busy Executive Office staff had no positive incentive to take an interest in them, and paid a high opportunity cost in time to monitor noncontroversial achievements of government. 123/

Ford: 1974-1976

The MBO initiative, which was closely associated with the fate of the Nixon Administration, suffered similarily as a result of the Watergate crisis. The crisis did much to deflect attention and energy from the program, and "by the time Nixon resigned in August 1974, MBO was effectively dead as a coordinated central management initiative." 124/ But, because it had taken a relatively firm hold in two or three departments (notably HEW and Interior), "an argument can be made that the MBO initiative has had some lasting effect on Government management practices." 125/ In the short term at least, continuation of the MBO effort was assured when a revised version of MBO was incorporated into the Presidential Management Initiatives (PMI) program proposed by President Ford's new OMB Director, James T. Lynn in April 1976.

PMI, which was approved by President Ford in May and formally launched in July of the same year, has been described as "an ambitious major effort to reinvigorate OMB's management improvement role and provide for more effective, efficient, responsive, and accountable Government." 126/ Unlike most other recent efforts to "reinvigorate" OMB's management role, however, it did not involve the addition of new staff or divisions to the agency. Instead, PMI represented an attempt to build on the efforts of the Nixon Administration to integrate OMB's budget and management operations. Both the management plan concept and the incorporation of management planning into the

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123/ Ibid.

124/ U.S. General Accounting Office. Selected Government-Wide Management Improvement Efforts -- 1970 to 1980. GAO/GGD-83-69, August 8, 1983. Washington, D.C. p. 12.

125/ Ibid.

126/ Ibid., p. 17.

annual budget cycle, central features of the Ash/Malek approach to management improvement, were retained under this program. According to Donald Haider, OMB Director Lynn sought to use the institutional format inherited from the previous administration as a means of "harnessing" OMB's ongoing management activities in the executive branch to the set of distinctive management initiatives that were the centerpeice of PMI. 127/

An OMB task force under Lynn's direction prepared issue papers on twenty-four such initiatives, which were grouped under five headings: decision-making and departmental organization, evaluation of current programs, federal reporting and regulatory burden reduction, contracting-out and controlling overhead costs, and personnel management. The central concerns of the PMI agenda were responsive to the management-improvement and regulatory-reform goals that President Ford, in his first 18 months in office, had identified as a major component of his administration's agenda: for example, paperwork reduction (PMI called upon agencies to reduce federal paperwork burden on public by 5% by end of FY 1977 and an additional 15-20% by end of FY 1978) and improved economic analysis of regulatory decisions (agencies were required to develop schedules, internal control systems, and overall procedures for reviewing regulations affecting agency programs and operations). Each of these initiatives were grouped under the rubric of "federal reporting and regulatory burden reduction;" the latter followed from Executive Order 11821's requirement, effective January 1975, that all major agency proposals for new legislation or regulations be accompanied by an Inflationary Impact Statement (IIS). 128/

127/ Haider, Donald. Presidential Management Initiatives: A Ford Legacy to Executive Management Improvement. Public Administration Review, v. 39, May/ June 1979. p. 249.

128/ This account is drawn from: Haider, Presidential Management Initiatives, p. 250-251. Other major PMI objectives and directives to agency and department heads included: 1) Program Evaluation -- agencies were to rank order ten program-evaluations and ten efficiency evaluations specifying targeted completion dates within the context of their overall management plan; 2) Contracting Out/ Controlling Overhead Costs -- agencies were to develop plans for increased reliance on the private sector by identifying five administrative functions performed in-house for possible contracting-out and to establish systems for routinely determining and analyzing costs with particular attention to 9 administrative areas (travel, ADP, cash management, reproduction equipment, audiovisual activities, telephone, mail, space utilization, and records storage); and 3) Personnel Management -- five broad personnel management initiatives were emphasized: agencies were to identify and develop personnel with management promise; improve the quality of their work forces; control grade escalation and improve position management; refine and extend productivity measures; and constrain the overall level of federal employment. Ibid., p. 251-254.

President Ford's PMI program encompassed twenty departments and agencies, whose expenditures accounted for 90% of the federal budget. In the PMI program, the heads of these departments and agencies had ultimate responsibility for identifying which of the intiatives covered by the President's program they would give their principal attention. Each agency was charged to oversee development of an agency-based management plan and to establish appropriate units within their respective organizations, if none already existed, to monitor progress towards the realization of the objectives spelled out in those plans. Each agency was also responsibile for ensuring that the broader concerns underlying PMI were integrated into its decision-making processes -- for example, that important program decisions would be made only after considering their potential inflationary impact. 129/

The formal emphasis on agency-based management planning suggests that PMI may originally have been predicated on a greater delegation of responsibility to the line agencies and departments for identifying key management issues -- and for implementing management improvement reforms -- than the top-down approach that had been used by the Nixon Administration. Such a shift in responsibility seemed to be reflected in the new twist given the MBO program (also incorporated into PMI under the rubric of "decisionmaking and departmental organization"). Instead of revolving around the notion of "presidential objectives", the new MBO format was to develop "statements of objectives" which departmental and agency heads personally wanted to achieve over the next 12 to 18 months. 130/ In retrospect, however, PMI remained what has been termed a "highly interventionist" management strategy. 131/ The development of an internal tracking system for providing monthly OMB progress reports to the President, for example, suggests that OMB Director Lynn was even more concerned than Ash and Malek before him with insuring centralized supervision over agency management improvement efforts.

In any event, it appears that OMB was from the outset meant to play a central role in overseeing the President's management-improvement program. Agency compliance with the monthly reporting requirements and other OMB-designed guidelines were to be monitored by OMB's Associate Director for Management and Operations. According to Haider, "OMB's management staff would perform cross-cutting analysis of agency plans broken into component parts across all twenty agencies, while the program divisions would perform agency-by-agency reviews beginning with the budget examiners and building

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129/ Ibid., p. 250-251.

130/ Ibid., p. 251.

131/ U.S. GAO, Selected Government-Wide Management Improvement Efforts, p. 17.

up to the PAD level. Much of the agency's professional staff would thus be involved in PMI implementation." 132/

In August 1976, the twenty agencies participating in PMI submitted to OMB their preliminary FY 1977 management plans. The results of the first round of PMI activity suggested that PMI suffered from many of the same problems that had beset MBO: "Some plans were incomplete, others were unresponsive to requests, or committed the agency to nothing new." 133/ Predictably, those departments and agencies noted for their strong internal management and leadership generally developed "thoughtful, well organized management plans" while those with "chronic management problems amply manifested their weaknesses." 134/ Once again, the management improvement effort was impeded by the lack of agreedupon standards for evaluating progress both within OMB ("the management side ... applied a separate set of criteria for each of the 24 initiatives in its cross-cutting analysis, while the budget examiners and PADs had their own sense of what priorities to stress for their particular departments and agencies") and between OMB and the line agencies, whose officials "may have had still another perspective on what management areas required strengthening. . . ." 135/

According to a GAO appraisal, the entire PMI effort met with considerable opposition. In the first place, its monthly reporting scheme "created an inordinate paperwork burden, both in the agencies and OMB. The PMI responsibilities created additional work requirements for the [OMB] budget staff during their busiest period, the analysis of agency budget requests. The fact that the additional work requirement was imposed from the Director's office, with no appreciable staff input, was another factor causing budget staff resentment." 136/

In addition, Haider writes: "Some careerists sensed that PMI's purpose may have been more political than managerial since it had begun during during a presidential election year." 137/ The preoccupation of White House officials and departmental executives with the presidential campaign on the one hand, and the time demands placed on the

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132/ Haider, Presidential Management Initiatives, p. 250.

133/ Ibid., p. 254.

134/ Ibid., p. 255.

135/ Ibid., p. 254.

136/ U.S. GAO, Selected Government-Wide Management Improvement Efforts, p. 18.

137/ Haider, Presidential Management Initiatives, p. 255.

OMB Director and Deputy Director by the budget process on the other, goes a long way in explaining why "the promised top-level interest never materialized." 138/ Given this situation, it is hardly surprising that agency and OMB staff alike appear to have lacked the incentive to vigorously pursue the PMI agenda: "Without top-level involvement, particularly after the President's defeat in November [1976], PMI was reduced to a paper exercise." 139/

Neither the problems encountered in the first round of PMI implementation nor Ford's electoral defeat, however, dissuaded OMB Director Lynn from attempting to establish a formalized management improvement process drawing upon the PMI experience. On November 17, 1976, OMB issued Circular A-113 ("Preparation and Submission of Management Plans"), which stipulated that, beginning in 1977, agency management plans would be submitted to OMB along with the regular budget submissions. However, the fate of Circular A-113 lay in the hands of the incoming Carter Administration, whose management team had its own agenda and concerns. Although the decision was several weeks in coming, Circular A-113 was clearly bereft of a supportive constituency either within OMB or outside, and on March 3, 1977, the new OMB Director, Bert Lance, formally suspended its reporting requirements.

Carter: 1976-1980

In the view of many observers, the fate of the MBO program under the Nixon Administration and of the PMI effort associated with the Ford Presidency served as a reminder of the limitations inherent in attempting to use the federal budget to improve the management of federal departments and agencies. The subordination of traditional management concerns to budgetary and related economic issues within OMB in the early 1970s was reinforced after the passage of the Budget and Impoundment Control Act of 1974, which (in conjunction with the advent of "stagflation" and the resulting pressure to cut the federal budget) rendered the agency's normal preoccupation with the budget even more pronounced and dominating. 140/ However, the

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138/ U.S. GAO, Selected Government-Wide Management Improvement Efforts, p. 18.

139/ Ibid.

140/ In a report issued on the eve of the 1976 presidential election, a panel of the National Academy of Public Administration (NAPA) concluded that the principal objective underlying the 1970 reorganization had not been realized. Rather than having been stregthened, BoB/OMB's managerial role had deteriorated; the NAPA report described it as "weak and fragmented."

In the view of a minority of the panel, recent developments had served as a reminder that "only on rare occasions can management

(Continued)

election of Jimmy Carter to the Presidency appeared to hold out some promise that "management" concerns, and consequently OMB's managerial role, would assume greater importance in the next administration.

Carter's claim to skill in government, James Sundquist has written, was "not as a legislator or strategist, but as organizer and manager." 141/ During his presidential campaign Carter often emphasized his accomplishments in having reorganized and modernized the government of Georgia. A centerpiece of his platform was the promise to thoroughly reorganize the executive branch and "streamline" the Federal government by eliminating useless agencies and consolidating nsolidating agencies with overlapping functions. His stated objective was to trim the Federal government down from some 1900 agencies to 200. 142/

Shortly after taking office, President Carter took two important steps to give form to his reorganization initiative: First, he established the "President's Reorganization Project" (known as PRP or "the Project") within OMB by greatly expanding the agency's existing

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140/ (Continued) thrive in the same institution as the budget function" and to cast doubt on the viability of the "basic BOB-OMB concept" of combining budget and other management functions in one organization. This group noted several ways in which proximity to the budget process handicaps OMB's management improvement efforts: (a) the annual budget cycle often limits or distorts good management practices; (b) budget examiners identify with individual agencies or portions of agencies and frequently lack sympathy for cross-cutting management efforts which seek to standardize and simplify procedures among groups of agencies; and (c) many agencies will only cooperate freely and candidly with management improvement experts if they are persuaded that the management staff will not become "back door" channels of intelligence to be used against them by the budget examiners.

The majority of the panel, however, held that that concept of combining management and budget in one organization was basically sound and should be preserved. They were concerned that management functions would have little or no impact if they were located elsewhere, arguing that there is "no substitute for the leverage and Presidential accessibility provided by the budget process". To ensure that OMB function as intended, it urged that steps be taken during the next presidential term to ensure support for activities undertaken by the "M-side." NAPA, The President and Executive Management, p. 19-20.

141/ Sundquist, James. Jimmy Carter as Public Administrator: An Appraisal at Mid-Term. Public Administration Review, v. 39, January/Febraury 1979. p. 3.

142/ Havemann, Joel. Reorganization -- How Clean Can Carter's Broom Sweep? National Journal. January 1, 1977.

Organization and Special Studies Division, thereby "adding numbers and prominence to the management side" 143/; second, he requested renewal (on February 4, 1977) of Presidential authority to submit reorganization proposals, which had expired in April 1973, and had not been renewed. After some debate in Congress, the Reorganization Act of 1977 (Public Law 95-17) was passed and signed by Carter on April 6. 144/

Reorganization Plan No. 1 of 1977 produced, among other things, a realignment of OMB reflecting Carter's concern that its management function not only be enhanced, but also redefined and restructured to emphasize the reorganization effort. 145/ The reorganization accomplished two principal things: First, a redefinition of OMB's management function, evident in the transfer of four of the agency's managerial functions (and associated personnel) elsewhere. 146/ Second, the reorganization resulted in the enhancement of OMB's management function which became evident in the explicit separation of the "M"

143/ U.S. GAO. Selected Government-Wide Management Improvement Efforts, p. 19.

144/ For the legislative background on the Reorganization Act of 1977, consult: U.S. Library of Congress. Congressional Research Service. The Carter Reorganization Effort: A Review and Assessment. Report No. 80-172-Government, by Ronald C. Moe. Washington, 1980. p. 19-26.

145/ Reorganization Plan No. 1, which was the first PRP initiative, was intended to provide the authority to reorganize the EOP. Carter submmited the plan to Congress on July 15, 1977. In the message accompanying the plan, the President noted that he had "asked the OMB to reorganize its management arm to emphasize major Presidential initiatives, such as reorganization, program evaluation, paperwork reduction, and regulatory reform." See: Congressional Record, July 15, 1977, H7232, S12017. The plan was voted down in the House, but the Senate failed to act within the required period and the plan therefore went into effect on October 19th. For a detailed discussion of Reorganization Plan No. 1 of 1977, consult: U.S. Library of Congress. Congressional Research Service. Reorganizing the Executive Office of the President: Reorganization Plan No. 1 of 1977. Report No. 78-19-Government, by Ronald C. Moe. Washington, 1978.

146/ Jurisdiction over operational aspects of Government's information systems was shifted to a new Administrative Office within the EOP. Activities relating to executive development and labor relations (with some exceptions, e.g., pay agent) were moved to the Civil Service Commission. Statistical policy, except for the clearance of agency forms, was shifted to the Department of Commerce. The General Service Administration was given responsibility for the advisory committee management secretariat.

side from the "B" side of OMB (creating a return to a "bifurcated" internal organization) and the addition of a new, presidentially appointed Executive Associate Director (EAD) for Reorganization and Management to OMB's structure (alongside an Executive Associate Director for Budget). The management staff was expanded by some 32 full-time positions to 129 at the same time that the overall authorized size of OMB was decreased from 709 full-time employees to 570, or by 19.6%. 147/

The importance of reorganization in the Carter administration was evident in the early establishment of the PRP itself. It was further reinforced in symbolic fashion by the designation of the non-budgetary EAD as "Executive Associate Director for "Reorganization and Management" and at the organizational level by the restructuring of the management divisions to create a new division of "Organization Studies" (alongside the Management and Regulatory Policy division). As a result of this reshuffling the two management units divided their responsibilities in the following way:

Management and Regulatory Policy division

had 5 units responsibile for:
- management improvement and evaluation
- Federal personnel policy
- regulatory policy and reports management
- information systems policy
- intergovernmental affairs

Organization Studies division (PRP)

had 5 functional groupings:
- national security and international affairs
- human resources
- economic development
- natural resources
- general government

Each of the units in the Organization Studies division were directed to conduct studies to determine the most appropriate structure of Federal activities in its subject area and to make appropriate recommendations concerning possible consolidations. They also were to monitor the implementation of such consolidations and the progress of the departments' and agencies' internal reorganizations.

147/ Office of the White House Press Secretary, Fact Sheet dated July 15, 1977. p. 2. It is important to note, however, that some of this decrease was illusionary, because it stemmed from the transfer of several minor "managerial" functions from OMB to other EOP units or executive branch agencies.

The reorganization projects undertaken by the PRP were undoubtedly the centerpiece of OMB's "management" activities during the early years of the Carter Presidency. So strong was the bias toward reorganization as a way to solve administrative problems that Mosher has noted that, "[f]or a period at least, the word management was nearly equated with reorganization by those within OMB and indeed in the government as a whole." 148/

The reorganization efforts were extensive and the level of activity often frenzied. Dozens of task forces were formed (under the auspices of the five functional units) to develop structural reorganization proposals. By January 1978, 30 studies were in progress. This effort involved several hundred employees. Moe has observed that "[I]n terms of the number of personnel involved, [PRP was] one of the largest reorganization exercises yet undertaken." 149/ However, a relatively small permanent staff was committed to the effort: to accomplish its mission, many temporary employees and agency detailes were assigned to the project. This staffing pattern led Dempsey to call the PRP "a hybrid organization" because it was composed of "political appointees, OMB careerists, and personnel 'detailed'. . . from the operating agencies." 150/

The PRP also differed from earlier reorganization efforts in its basic orientation. While the rationales offered for the individual reorganization plans proposed by its various task forces often reflected such traditional concerns as the need to eliminate duplication and consolidate functions, the philosophy governing the PRP effort as a whole "deliberately eschewed the kind of comprehensive organizational model or theory that had guided previous organizational initiatives, such as those of the Hoover Commissions and the Ash Council." 151/ This was reflected both in the fact that none of the PRP units were "assigned responsibility for examining the total governmental system and identifying problems cutting across departmental lines" 152/ and in the fact that no comprehensive report along the lines of those submitted by the Brownlow and two Hoover Commissions or the Ash Council was apparently ever envisaged. Instead, the Project adopted what one of its officials described

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148/ Mosher, Tale of Two Agencies, p. 114.

149/ R. Moe, The Carter Reorganization Effort, p. 10.

150/ Dempsey, John R. Carter Reorganization: A Mid-term Appraisal. Public Administration Review, v. 39, January/February 1979. p. 74.

151/ U.S. GAO, Selected Government-Wide Management Improvement Efforts, p. 19.

152/ Seidman, Harold. Politics, Position, and Power. 3rd ed. New York, Oxford University Press, 1980. p. 131.

as an "incremental, people-centered, bottom-up approach" that, Seidman notes, was proclaimed "as an innovative method of analyzing organization structure as it effects people directly" rather than with a view to ensuring conformity to some preconceived theory. 153/ Such an absence of organizational principles was conceived as a virtue. For example, at his 1979 confirmation hearing, OMB Deputy Director John P. White stated that "Reorganizations should proceed from problems which have been identified towards solutions rather than from such preconceived notions of idealized structure." 154/

However, the "innovative" approach adopted by the PRP created some problems. Three members of Congress, for example, were sharply critical of the proposal for a reorganization of the EOP contained in Reorganization Plan No. 1 of 1977, claiming it lacked a "defensible administrative theory." 155/ And, although that reorganization plan eventually went through, the perception that they lacked what Seidman termed a "unifying theme or set of ... organizational principles" contributed to the lukewarm reception given many of the PRP's proposals. 156/ The largest projects, which developed proposals to consolidate fragmented programs in four areas -- economic and community development, natural resources, food and nutrition, and trade -- into four Cabinet level departments, "were shot down in whole or in part by the White House staff", which wrote them off as "politically naive." 157/ Advance consultation with Congress apparently revealed that approval of these and other proposals (e.g., to consolidate authority for legal representation) would have been unlikely. 158/

On the other hand, the ten reorganization plans that were submitted to Congress were all approved. However, commenting on the

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153/ Ibid., p. 127.

154/ U.S. Congress. Senate. Committee on Government Affairs. Nomination of John P. White to be Deputy Director of the Office of Management and Budget.. Hearings, 96th Cong., 1st Sess., March 30, 1979. Washington, U.S. Govt. Print. Off., 1979, p. 28.

155/ Wydler, John W., Thomas N. Kindness, and Arlan Strangeland. In Statement of Additional Views. U.S. Congress. House. Committee on Government Operations. Reorganization Plan No. 1 of 1977. House Report No. 95-661, 96th Congress, 1st Session, Washington, U.S. Govt. Print. Off., 1977. p. 60.

156/ Seidman, Politics, Position, and Power (3rd ed.), p. 127.

157/ Ibid., p. 129.

158/ U.S. GAO, Selected Government-Wide Management Improvement Efforts, p. 20.

five plans that had won acceptance by Carter's mid-term, Dempsey wrote that "the results can hardly be seen as major reorganization accomplishments." 159/ A GAO report issued in August 1983 sounded much the same conclusion with respect to all ten plans: "[T]hese were either of minor importance or impact, resulted from congressional initiatives [e.g., the creation of the Federal Emergency Management Agency, FEMA] or were a subsidiary link to policy change." 160/

Despite these disappointing results, even those generally critical of the PRP's work concede that some significant accomplishments were associated with the Carter Administration's reorganization efforts. Seidman, for example, argues that: "If ... evaluated individually, [Carter's] record [in this respect] is quite impressive and compares favorably with that of most other presidents." 161/ To buttress this observation, Seidman cites two examples: 1) civil service reform; and 2) the creation of the Department of Energy (DOE) (to which others would add, the creation of the Department of Education). 162/

But even these achievements have been questioned. Critics of the PRP point out that the Civil Service Reform Act (PL 95-454), which was passed on October 13, 1978, was largely a product of recommendations of the President's Federal Personnel Management Project (FPMP), a task force operating for the most part outside OMB supervision. Although a PRP group contributed to this effort and was partly responsible for Reorganization Plan No. 2 of 1978, which abolished the Civil Service Commission (CSC) and created two new entities, the Office of Personnel Management (OPM) and the Merit System Protection Board (MSPB), 163/ civil service reform cannot be considered primarily a PRP accomplishment.

Moreover, the impetus behind creation of the Department of Energy pre-dated the Carter administration. The 94th Congress had recommended a comprehensive energy reorganization and President Ford had proposed a DoE just prior to his departure. Carter had endorsed the proposal

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159/ Dempsey, Carter Reorganization: A Mid-term Appraisal, p. 35.

160/ U.S. GAO, Selected Governmental-Wide Management Improvement. p. 20.

161/ Seidman, Politics, Position, and Power (3rd ed.), p. 130.

162/ Ibid.

163/ In addition, this reorganization plan created a Federal Labor Relations Authority to replace the Federal Labor Council and other organizational components of the Government's labor relations program.

in his campaign, and although a PRP group was involved in this effort, again a separate task force outside OMB was principally responsible for this reorganization. Finally, this same pattern was true of the reorganization creating the Department of Education. The original impetus here too was congressional. Even though President Carter had endorsed this proposal in general terms during his campaign, it was Senator Abraham Ribicoff who introduced the bill to create the Department in March 1977 and the President supported the Senator's proposal (with minor revisions) afterward.

While the PRP's reorganization efforts cannot be entirely discounted, and some of its other accomplishments are noteworthy, 164/ on the whole it is clear that the PRP failed to meet its major objectives and fell a good distance short of Carter's campaign promise to "completely reorganize" and streamline the Federal government. In fact, by the end of his term, the Carter reorganization effort resulted in more, not fewer agencies. 165/

What accounts for the lack of success of the PRP effort? Seidman has suggested that, in addition to its own built-in limitations or theoretical shortcomings, the incremental, bottom-up approach to reorganization taken by PRP "implies an absence of presidential leadership and direction." 166/ A GAO review sounds a similar theme: "Although the President personally gave the reorganization initiative substantial attention, subsequent experience tended to confirm the doubts expressed by many of the President's advisers and congressional allies about the priority given the effort." 167/ This skepticism reflected the perceived political difficulty involved in reorganization efforts when the President has to deal with politically affected interest groups, agencies and congressional committees. This general problem, which would be serious in any event, was compounded by a number of oft-cited deficiencies that critics have ascribed to the Carter Administration. For example, according to Dempsey:

> Inadequate staff work, poor coordination and consultation with Congress, and the tendency to seek 'too much too

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164/ For example, Seidman notes that the PRP made real contributions in areas such as cash management, paperwork reduction, and regulatory reform (Politics, Position, and Power, 3rd ed., p. 131), and Dempsey notes that PRP staff work contributed significantly to developing the Justice Improvement Act of 1978. Carter Reorganization: A Mid-term Appraisal, p. 75.

165/ R. Moe, The Carter Reorganization Effort, p. 69.

166/ Seidman, Politics, Position, and Power (3rd ed.), p. 130.

167/ U.S. GAO, Selected Government-Wide Management Improvement Efforts, p. 20.

> soon'... hurt the reorganization effort, just as they... hindered many other administration initiatives. Further, the President's own reputation [did] not [help] the effort.... Jimmy Carter [was] admired by very many people in Washington; he [was] feared by very few.... Accordingly [agencies were quite] adamant and outspoken about 'protecting their turf' [and] (rather openly) sought and found allies in Congress to frustrate reorganization efforts. 168/

To compound matters there were several in-house problems within OMB. The GAO report noted that:

> Within OMB, the PRP did not develop a close relationship with the budget staff and the regular processes it controlled. Staffed largely by temporary employees and detailees, and lacking a firm institutional footing, the reorganization initiative was never able to cope effectively with the knowledge or program expertise [of] the budget staff. After a flurry of paperwork from agencies in reponse to PRP's request for information, it was quickly perceived that OMB as a whole was not digesting or acting on agency reports on organizational structure and regular agency contacts with PRP dwindled substantially." 169/

The GAO report also pointed out that the PRP was further plagued by a lack of sufficient authority to deal fully with practical problems involved in implementing approved reorganizations, even though the Project's leadership anticipated many of them. 170/

Given all these problems and constraints, it is hardly surprising that the importance of the PRP reorganization initiative declined fairly rapidly after mid-term. By the close of 1978, only ten PRP groups remained. As the administration's interest in reorganization efforts waned, the decline in the size and prominence of the PRP continued; only ten studies were continued into 1979, and these were gradually brought under the operational purview of OMB (as distinct from the PRP). Sometime in early 1980, quietly and without formal announcement, the Project expired.

As it became apparent that the PRP effort was not going to fulfill its original ambitious expectations, officials in OMB began to urge that attention be given to more conventional approaches to

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168/ Dempsey, Carter Reorganization: A Mid-term Appraisal, p. 75.

169/ U.S. GAO, Selected Government-Wide Management Improvement Efforts, p. 21.

170/ Ibid.

management improvement. This resulted in two initiatives: 1) the promulgation of OMB Circular A-117; and 2) the formation of the President's Management Improvement Council.

Circular A-117, "Management Improvement and the Use of Evaluation in the Executive Branch," was issued on March 23, 1977. It was intended to broaden the base of management improvement activity thoughout the Federal government. "Although Circulars A-44 and A-113 were still on the books, neither had any practical effect, and the management side of OMB was still without an effective charter to conduct management improvement activities among the Federal agencies." 171/ In addition to filling this gap, Circular A-117, was intended to complement the Carter Administration's budgetary reform initiative (ZBB). However, it stated management improvement objectives in broad, some would say "vague" terms -- directing executive agencies to assess the "effectiveness" and "efficiency" of programs on a continuing basis -- without translating those objectives into meaningful activities. The hoped-for linkage of management initiatives to the budget process -- and the development of more constructive relations between the "M" and "B" sides of OMB -- did not materialize. "[I]n examining OMB's actions under Circular A-117, GAO found that OMB had not fully planned the implementation of the Circular before it was disseminated to the agencies. ... [W]ithout effective follow-up, the [annual] reporting provisions ... were soon labelled useless red tape" by the latter, and "with tacit agreement by OMB, more and more agencies ceased filing reports altogether." 172/ By January 1983, a panel formed to review existing OMB Circulars would recommend that the requirements of Circular A-117 be rescinded.

The second management initiative of the later stages of the Carter Administration was the formation of the Management Improvement Council. This initiative stemmed from consultations between the White House and the OMB and OPM staffs that began in early 1979. To complement the reorganization project and the Carter Administration's efforts on waste and fraud in government, 173/ the President was urged to create a council to encourage and coordinate management improvement efforts, similar to the Nixon Administration's Advisory Council on Management Improvement.

171/ Ibid., p. 21-22.

172/ Ibid., p. 22-23.

173/ An Executive Group to Combat Fraud and Waste in Government was established on May 3, 1979. The prevention and detection of fraud, waste and abuse in the management of domestic programs had been one of the principal objectives underlying the Inspector General Act of 1978 (Public Law 95-452, October 12, 1978), which established Offices of Inspector and Auditor General in seven executive departments and six executive agencies.

The President's Management Improvement Council was established by Executive Order 12157 on September 14, 1979. Co-chaired by the Directors of OMB and OPM, the council included leaders from business, labor, universities and foundations, State and local government, and Federal agencies. Its short-term objective was to tap the expertise that the private sector, as well as the talent within Federal agencies, could bring to bear on specific management problems. Specific projects undertaken by the Council included efforts aimed at improving the management of travel by Federal employees and increasing the efficiency of the Government's debt collection efforts (both of which were continued during the Reagan Administration under the auspices of "Reform '88") as well as six others (including medicare contracting, Indian tribal management capability, human resource management in GSA, and general management improvement in the Immigration and Naturalization Service, INS).

Beyond these relatively narrow responsibilities, the Council had a more overarching purpose -- "to identify critical management problems and constraints on management effectiveness, [and] to advise the President on these issues ... and propose solutions." 174/ However, the Council's involvement in individual projects consumed most of its attention and limited resources, and despite the interest of some members in doing so, the Council never effectively fulfilled its mandate of providing broad management advice to the President. "In the view of the Council's Executive Director, the information and suggestions developed [in the context of the individual projects], while of interest to agency executives, were not matters of sufficient breadth to warrant Presidential attention." 175/ The GAO's appraisal of the Council's efforts added that "The timing of the initiative, coming late in the presidential term, as well as the quarterly meeting schedule, did not help maintain the initiative's momentum." 176/

Finally, in discussing the Carter Administration's management improvement efforts, some mention should be made of its Zero-Based Budget (ZBB) initiative. Although it was primarily designed to create more rational budgeting processes than those in use at the time, ZBB was also considered to be a management tool to improve the allocation of resources government-wide and within agencies. In this sense, it was a logical successor to the Johnson-era PPBS program and the Nixon's Administration's management-by-objective effort. 177/

174/ U.S. GAO, Selected Government-Wide Management Improvement Efforts, p. 24.

175/ Ibid., p. 25.

176/ Ibid.

177/ A more detailed discussion of ZBB may be found in the account of the evolution of OMB's budget function provided by V. McMurtry elsewhere in this Committee Print.

Although announced with considerable fanfare and expectations, the story of ZBB as a management technique proved to have many disappointing parallels to the earlier PPB and MBO programs. Unlike the PPBS and MBO initiatives, no separate agency staffs were organized to implement ZBB — the "decision units" which were to do the rank-ordering of programs under this new system were defined by OMB as "the program or organizational unit for which budgets are prepared." 178/ In theory, these "decision units" were to prepare "decision packages" after deciding on goals and examining all alternatives to achieve those goals. "As with PPBS and MBO, however, bureaucrats [deep within the departments] had neither the authority to decide upon goals, nor the perspective to examine critically untried alternatives." 179/ Hence, the results of the ranking efforts conducted by individual departments were often expressed in very general terms. (Similar to the vague, non-controversial goals that had characterized the MBO/PMI "objectives" of the Nixon and Ford initiatives). For example, the Department of Justice reported that ZBB had "caused the executive staff to address many issues that would not have been addressed otherwise," but offered no further amplification. 180/

Recognizing the limited benefits of a program which, in any case, could have no effect on the 75% of the federal budget that was "uncontrollable," President Carter talked less and less about ZBB as his term in office wore on. "What happended," Randall observes, "is clear. Just as Johnson and Nixon could not sustain an interest in management techniques, so Carter's interest in ZBB quickly waned." 181/ In the end, Randall suggests, ZBB was just another technique designed to a create an image of management leadership, not to exercise direction and control. Under these conditions, he observes: "Management becomes little more than a slogan used by those who proclaim their ability to control and reduce a bureaucracy which they have persuaded the public to believe is too big and unmanageable." 182/

Reagan: 1980-Present

Following the election of Ronald Reagan to the Presidency in 1980, the structure and strategy for management improvement in the Federal government took yet another turn. The GAO has noted that: "From the outset, the Reagan Administration ... shied away from centralizing

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178/ OMB, Bulletin No. 77-9, April 19, 1977.

179/ Randall, Presidential Use of Management Tools, p. 191.

180/ Quoted in ibid., p. 192.

181/ Schick, Allen. The Road From ZBB. Public Administration Review, v. 38, March/April 1978. p. 178.

182/ Randall, Presidential Use of Management Tools, p. 191.

management improvement responsibility in a strengthened management side of OMB as the Carter Administration had done." 183/ The devaluation of OMB's "management" function vis-a-vis "budget" under the Reagan Administration was symbolized in the early elimination of the post of Executive Associate Director for Management from the agency's structure (its budget counterpart was retained). This devaluation was also reflected at the operational level during the initial months of David Stockman's tenure as Director of OMB, when, as Chester Newland has noted, the management side withered "through a heavy loss of resources to regulatory review and other functions and a deliberate narrowing of concerns." 184/

The "M-side" of OMB has remained in a decidedly subordinate position to the "B-side" throughout the Reagan years. According to the GAO, however, the early downgrading of the agency's central management capability "did not signal a lack of management activity, particularly after the first year of the Administration when budget battles dominated the agenda." 185/ Moreover, while OMB's management agenda during the first year and a half of Reagan's first term reflected the "deliberate narrowing of concerns" to which Newland referred, federal government management policy subsequently became a higher priority on the Administration's agenda, and the agency assumed a more active role in the management arena.

In essence, the story of the Reagan Administration's management improvement and reform initiatives, and of the "M-side" of OMB during the Reagan years, breaks down into two periods -- the periods before and after September 22, 1982. That date, which marks the establishment of the Cabinet Council on Management and Administration (CCMA) and the formal inauguration of the President's Management Improvement Program - Reform '88, also marks the effective starting date for what the Reagan White House has characterized as "one of the most comprehensive and ambitious efforts to improve management and reduce costs ever undertaken by any Administration." 186/

183/ U.S. GAO, Selected Government-Wide Management Improvement Efforts, p. 35.

184/ Newland, Chester A. Executive Office Policy Apparatus: Enforcing the Reagan Agenda. In Salamon, Lester M. and Michael S. Lund, eds. The Reagan Presidency and the Governing of America. Washington, The Urban Institute, 1985. p. 166. Elsewhere in this essay, Newland notes that a major portion of the staff for the task force on regulatory review chaired by Vice President Bush was created by "drastically reducing" OMB's "M-side" and invigorating its Office of Information and Regulatory Affairs (OIRA). Ibid., p. 162.

185/ U.S. GAO, Selected Government-Wide Management Improvement Efforts, p. 35.

186/ White House Fact Sheet (undated), The President's Management Improvement Initiatives, p. 1.

The driving force behind Reform '88 was Joseph P. Wright, who suceeded Edwin Harper as Deputy Director of OMB in April 1982. Harper's tenure as Deputy Director roughly coincides with the "narrower phase" of OMB's management activity. During this period, the management side confined its limited activity to building on initiatives to strengthen federal debt-collection efforts and eliminate abuse of federal travel that date from the Carter Administration 187/ and providing assistance to the President's Council on Integrity and Efficiency (PCIE), which had been established by Executive Order in March of 1981 to coordinate efforts to reduce agency waste, fraud and abuse. 188/ By absorbing these ongoing activities into Reform '88 -- which Wright has described as an "umbrella concept" for a set of initiatives designed to reform federal management and administrative systems 189/ -- and by means of a reorganization of the "M-side" carried out during the summer of 1982 190/, the new Deputy Director undertook simultaneously to expand and focus OMB's management agenda.

187/ OMB's iniatitives in the area of debt collection included a May 15, 1981 letter from David Stockman to Speaker of the House O'Neill containing a proposal for a Debt Collection Act, the essential elements of which were incorporated in the Debt Collection Act of 1982 (PL97-365), enacted October 25, 1982. An interagency Travel Management Improvement Group was created under OMB's auspices in July 1981, and in April 1982 OMB issued Bulletin No. 82-11, "Strengthening Travel Authorization Policies and Procedures to Eliminate Wasteful Spending on Travel."

188/ Shortly after the establishment of the PCIE, OMB issued Circular A-123 on internal control systems, prescribing policies and standards to be followed by agencies in establishing and maintaining efficient and effective systems of internal control over their program and administrative activities. According to the GAO, the "guiding concept" of this circular, which was issued on October 28, 1981, is that "fraud, waste, and mismanagement can be better attacked through prevention than after-the-fact detection." U.S. GAO, Selected Government-Wide Management Improvement Initiatives, p. 37.

189/ See: Cole, John D. R. Joe Wright on Reform '88. The Bureaucrat, v. 12, no. 2, summer 1983. p. 7-11.

190/ Wright served notice of an impending reorganization of OMB in a June 1, 1982 memorandum to the agency staff. Two of the three proposed changes that had important implications for the "M-side" were carried out during the following month. First, the Personnel Policy Division was abolished on July 11, its remaining staff and functions transferred to the Justice, Teasury and General Management Division on the "B-side" (OMB Memo No. 82-37). Two weeks later, the Organization and Special Projects Division was disbanded (OMB Memo

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There were ten initial, or "Phase I," Reform '88 objectives aimed mostly at reducing costs and enhancing revenue collection. The ten goals were to: 1) upgrade federal cash management systems; 2) increase collection of debts owed the government; 3) encourage the sale of surplus government property; 4) foster efficient and effective management and eliminate fraud and abuse through strengthening internal accounting and administrative controls; 5) identify unliquidated obligations on agency books; 6) recover funds owed agencies as a result of audits; 7) reduce nondefense workyears by 75,000 full-time equivalents during the period 1982-84; 8) limit wasteful spending on government periodicals, pamphlets and audiovisual products; 9) achieve significant savings through systematic reform of procurement practices (e.g., amending and making greater use of A-76 contracting-out review procedures); and 10) reduce government paperwork and thereby limit costs to individuals, private organizations, and state and local governments. 191/

The launching of Reform '88 was clearly the chief management venture undertaken by OMB during Reagan's first term. Its emphasis on increased economy, efficiency, and accountability in government is both complementary to and consistent with other Administration initiatives dating from that term such as OMB Circular A-123 on internal control systems (October 28, 1981) 192/, the Federal Managers' Financial Integrity Act of 1982 (PL97-255) 193/, and the Deficit

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190/ (Continued) No. 82-39). Sometime between July-September 1982, as announced in Wright's June 1 memo, personnel were transferred from the Budget Review Division's (BRD) Financial Management Branch to create a new Financial Management Division on the "M-side", reflecting the Administration's increased emphasis on government-wide cash and financial management.

Direction of the Reform '88 initiative was initially provided by a separate Task Force on Management Reform set up within OMB on September 22, 1982. Subsequently, the Task Force was disbanded and responsibility for overseeing the Reform '88 projects brought under the operational purview of the "M-side", specifically the Management Improvement Division (except for the cash/financial management and debt collection initiatives, responsibility for which was lodged in the Financial Management Division).

191/ Cole, Joe Wright on Reform '88, p. 7-9. While acknowledging that Reform '88 reflected OMB's renewed interest in management, Newland has suggested that it was "a hurried initiative lacking in definition and substance and comprised of an incoherent collection of nine existing activities and vague hopes." Newland, Enforcing the Reagan Agenda, p. 166.

192/ See footnote 188 above.

193/ According to a GAO report, OMB initially oppposed FMFIA, which was enacted on September 8, 1982, "arguing that its objectives and processes were already sufficiently grounded in A-123." U.S. GAO, Selected Government-Wide Management Improvement Efforts, p. 37.

Reduction Act of 1984 (PL98-369). According to results published in the President's management report to Congress for fiscal year 1986 (which was mandated by the Deficit Reduction Act), many of the initial Reform '88 goals had been achieved by February 1985. In fact, the report noted that work had already begun on nine "Phase II" projects that include: 1) budget automation; 2) development of a standard government-wide financial data base; 3) improvement of agency accounting systems to General Accounting Office standards; 4) development of standard payroll and personnel systems with a high degree of automation in both areas; 5) streamlining administrative payment centers across the country; 6) intensifying automation and using private industry techniques in both credit and cash management; 7) expansion of an electronic telecommunications systems between the White House and major agencies; and 8) upgrading automated data-processing hardware and software to an efficient and effective degree as demonstrated in the private sector. 194/

While the projects of Reform '88 quickly became a centerpiece of the Reagan Administration's effort to make the Federal government more efficient, cost-effective, and business-like, responsibility for forging and directing management reform initiatives during the Reagan years has by no means been the exclusive province of OMB. Many significant Administration management initiatives have been promoted and/or coordinated by two special Presidential councils established during Reagan's first term in office. The first of these, the President's Council on Integrity and Efficiency (PCIE), which, as noted earlier, was established by Executive Order in March of 1981, consists of all statutory Inspectors General as well as other key enforcement officials. The stated purpose of the PCIE was to devise strategies aimed at broadening the impact and coverage of agencies Inspectors General efforts to reduce agency waste, fraud and abuse -- the Administration's "earliest priority in improving the management of government programs." 195/ The mandate given the second Presidential council, the President's Council on Management Improvement (PCMI), which was established in May 1984 and consists of Agency Assistant Secretaries for Administration, was considerably more comprehensive in scope. Executive Order 12479 charged the PCMI with resposibility for overseeing and coordinating ongoing management improvement

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194/ Cole, Joe Wright on Reform '88, p. 7-9.

195/ EOP and OMB, Management of the United States Government: Fiscal Year 1986, p. 11. Newland has suggested, however, that the Council was formed "with all the appearance of an attempt to stem a reaction to adverse publicity" arising from President Reagan's precipitate firing of all (supposedly independent) statutory Inspectors General early in his first term. This action, Newland reports, led to widespread criticism "about politicization of the IGs to avoid having 'watchdogs.' Reagan then reappointed six IGs along with ten new ones" and subsequently announced the creation of the PCIE. See: Newland, Enforcing the Reagan Agenda, p. 165.

projects and for formulating additional long-range plans to promote improved management systems. 196/

Although the Deputy Director of OMB was designated chairman the PCIE (and subsequently of the PCMI as well), the establishment of that Council early in Reagan's first term provided an indication of the Administration's willingness to entrust important management initiatives to groups formally operating outside OMB. This practice became clearer after September 1982, when (simultaneous to the launching of Reform '88) the Administration announced the creation of the Cabinet Council on Management and Administration under the leadership of Presidential Counsellor Edwin Meese III. The establishment of the CCMA was an especially noteworthy development because it provided, for the first time, an official unit in the White House responsible for the overall coordination and direction of management reform efforts, including those undertaken by OMB.

The Cabinet Council on Management and Administration was strongly active from the start, meeting 21 times in its first year of operation, and it quickly assumed a central role in the management arena by acting as the White House funnel and filter for initiatives promoted by the agencies, OMB, and the Councils on Integrity and Efficiency and (after May 1984) Management Improvement. In this context, as with respect to the PCIE and PCMI, the "M-side" of OMB has retained an important function as "convenor and coordinator" of management activity. 197/ In Newland's estimation, however, one of the distinguishing features of the Reagan Administration is the fact that "OMB has lost much of its management policy leadership to the CCMA." 198/

OMB's loss of management policy leadership has also been reflected in the fact that what is clearly the most visible Reagan Administration management initiative had its origins elsewhere. This is the President's Private Sector Survey on Cost Control (PPSSCC), better known as the Grace Commission after its chairman, J. Peter Grace. The Grace Commission was composed of task forces headed by 161 top private-sector executives. In a 47-volume report to the President issued in January 1984, the Commission recommended program and management changes in 36 areas of the Federal government; 2,478 recommendations were made that promised savings of $424 billion

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196/ The origin of the PCMI lay in an Assistant Secretaries for Managemeent Group (ASMG) that had been "resurrected" in April 1981. See: U.S. GAO, Selected Government-Wide Management Improvement Efforts, p. 35.

197/ Ibid.

198/ Newland, Enforcing the Reagan Agenda, p. 166. Earlier this year, the CCMA was abolished and its responsibilities transferred to the Domestic Policy Council.

over a three-year period after implementation. The management side of OMB has become the principal monitor of the Grace Commission recommendations. 199/ Nearly a year after the submission of the controversial report, however, fewer than a fifth of those recommendations had been implemented and the estimated cost savings remained the subject of considerable controversy. 200/ Dispute over the Grace Commission report has continued unabated among commission sponsors, government officials and academics. 201/

Inherent in the Grace Commission's recommendations are ideas that are consistent with the thrust of Reform '88 (or which were already included within that umbrella initiative) as well as the intentions of the Cabinet Council for Management and Administration and the President's Councils on Integrity and Efficiency and Management Improvement: that is, 1) to control the growth of government by selectively limiting funding through the budget process and controlling personnel levels to promote efficiencies and enhance productivity; 2) to identify waste and fraud in what remains of the funding provided; 3) to improve agency management to further reduce costs and make better use of what funding remains; 4) to develop improved government-wide management systems; and 5) to improve program delivery systems. 202/

199/ The White House has also been conducting its own independent review of the Grace Commission recommendations. At the time of this writing, the results of this review process had not been released.

200/ See: Rothman, Robert. Few Grace Commission Suggestions Adopted. Congressional Quarterly, November 24, 1984. p. 2990. A more favorable report on implementation results is contained in: EOP and OMB, Management of the United States Government: Fiscal Year 1986, p. 93-106.

201/ For discussions of the activities and recommendations of the Grace Commission, see: President's Private Sector Survey on Cost Control. War on Waste. New York, Macmillan Publishing Company, 1984; Grace, J. Peter. Burning Money. New York, Macmillan Publishing Company, 1985; Goodsell, Charles T. Grace Commission: Seeking Efficiency for the Whole People? Public Administration Review, Vol. 44, no. 3 May/June 1984. p. 196-204; Kelman, Steven. The Grace Commission: How Much Waste in Government? The Public Interest, winter 1985, p. 62-82; Congressional Budget Office and General Accounting Office. Analysis of The Grace Commission's Major Proposals for Cost Control. Washington, U.S. Gov't Print. Offc. February 28, 1984; and Comptroller General of the United States. Compendium of GAO's Views on the Cost Savings Proposals of The Grace Commission. Washington, GAO/OCG-85-1, February 9, 1985.

202/ See: EOP and OMB, Management of the United States Government: Fiscal Year 1986, especially Appendix B, Status Report on the Recommendations of the President's Private Sector Survey on Cost Control, p. 93-106.

Despite the controversy surrounding the assumptions underlying the Grace Commission's report and the accuracy of its data and projected savings, the report and its recommendations remain very much on the public agenda. This has occured for two reasons. First, its chairman, J. Peter Grace, has maintained an indefatigable campaign to win public support for the commission's recommendations through the media, personal lobbying, and Citizens Against Waste, a citizens organization formed to promote the Commission's reform proposals. Second, official consideration of the Grace Commission's recommendations is required by the Deficit Reduction Act of 1984, which authorized a review of the implementation of the Commission's recommendations in the President's management report to Congress. 203/ Congress has since taken further steps to ensure consideration of the Grace Commission recommendations: special caucuses have been created in each chamber for this purpose, and a "sense of the House" resolution was included in the Concurrent Resolution on the FY 1986 Budget calling upon each of its standing committees to "review and study on a continuing basis those portions of the [PPSSCC] affecting subjects within its jurisdiction." 204/

The mechanism to promote recommended management improvements is the management review process that is now an integral part of the budget process. Beginning with the fiscal 1986 budget review process, the management reviews are intended to be a rigorous, full-scale assessment of managerial systems and practices in the departments and agencies and to monitor implementation of all approved Reform '88, Grace Commission, and Fiscal 1985 management improvement recommendations. In addition, all agencies are to formulate management improvement plans consistent with their FY 1986 budget requests to the President. In this way, the Reagan Administration has sought to closely link its management and budget policies and to ensure that the management and budget staffs in OMB work together effectively on a common agenda.

The specific locus within OMB for the planning and coordination of the management side's participation in the annual budget reviews is the Planning and Communications Management Division, one of three

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203/ The FY 1986 report also served as an update on the Reform '88 management improvement initiatives and on government progress toward the administrative cost savings (in such areas as travel, printing, audiovisual, etc.) mandated by Section 2901 of the Deficit Reduction Act of 1984.

204/ U.S. Congress. First Concurrent Resolution on the Budget - Fiscal Year 1986. Conference Report To Accompany S. Con. Res. 32. House Report No. 99-249, 99th Cong., 1st sess. Washington, U.S. Govt. Print. Offc., 1985. Section 9, p. 22. The House (Congressional) Grace Caucus is chaired by Rep. Bean Butler (D-Tx); the Senate Grace Caucus, established in July 1985, is co-chaired by Gordon J. Humphrey (R-N.H.) and Dennis DeConcini (D-Ariz.).

new divisions established on the "M-side" as a result of reorganizations undertaken during Reagan's first term. 205/ At present, there are two other divisions alongside Planning and Communications Management -- a Management Improvement Division, which is responsible for overseeing most of the Reform '88 initiatives, and a Financial Management Division, which was established in the summer of 1982 in a move reflecting the Administration's increased emphasis on government-wide cash and financial management. 206/ Standing over all these divisions is the Management Secretariat, created in March of 1984 to provide for the ongoing coordination of projects conducted by the President's Councils on Integrity and Efficiency and Management Improvement, staff support for OMB's participation in the CCMA, and coordination of the "M-side's" involvement in the implementation of the Grace Commission recommendations. 207/ An organization chart providing a more detailed listing of the functions performed by each of these components may be found on the next page.

In summary, the Reagan Administration, through its first term management and administration cabinet council, President's Councils, Reform '88 programs, and the Grace Commission has provided an infrastructure for cross-cutting executive branch management coordination and reform. It has proven quite effective in ensuring centralized supervision of agency compliance with the Administration's management reform agenda, which looks to the private sector for appropriate management tools and techniques. This emphasis complements other control-oriented management reforms passed by Congress such as the Paperwork Reduction Act of 1980 (PL 96-511), the Prompt Payment Act of 1982 (PL 97-177), the Debt Collection Act of 1982 (PL 97-365),

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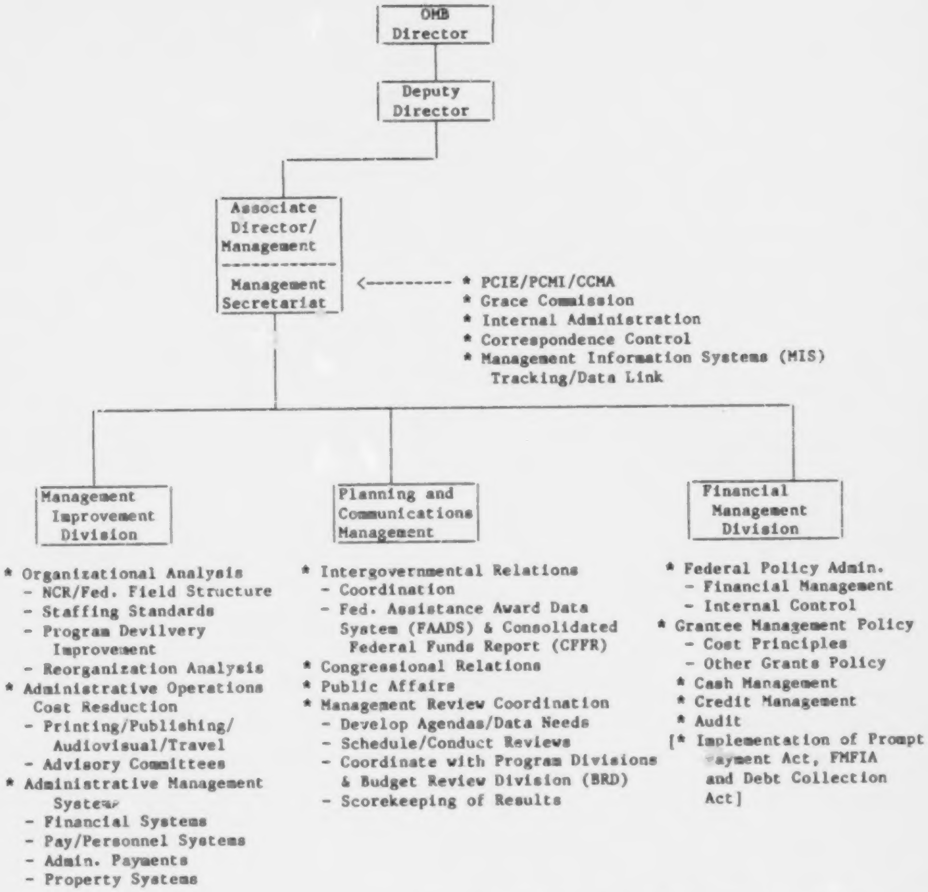
205/ The changes effected by the first major reorganization of the "M-side" undertaken during the Reagan years, in the summer of 1982, are described in footnote 190 above.

206/ The Administration's efforts to promote improved cash management appear to have originated in the Treasury Department early in Reagan's first term. A program devised by Carole J. Dineen, then-assistant secretary for fiscal affairs at Treasury (and currently OMB's Associate Director for Management) was subsequently absorbed into Reform '88. As part of that initiative, OMB in October 1982 issued Bulletin No. 83-6 ("Cash Management"), requiring each agency to designate a top level cash management officer and to prepare plans for improving its cash management practices.

207/ OMB, Memorandum For All Management Staff from Arlene Triplett (Associate Director for Management), dated March 6, 1984. p. 2. Before Triplett's arrival at OMB, the functions performed by the Management Secretariat had been handled by a fourth division on the "M-side" (known as Inter-Agency Activities). In addition to the creation of the Secretariat, Triplett undertook to disband the Intergoernmental Affairs Division, leaving Management Improvement as the only "M-side" division carried over from the Carter years.


OMB Director
Deputy Director
Associate Director/ Management
Management Secretariat
Management Improvement Division
Planning and Communications Management
Financial Management Division

- PCIE/PCMI/CCMA
- Grace Commission
- Internal Administration
- Correspondence Control
- Management Information Systems (MIS) Tracking/Data Link

Management Improvement Division

- Organizational Analysis
  - NCR/Fed. Field Structure
  - Staffing Standards
  - Program Devilvery Improvement
  - Reorganization Analysis
- Administrative Operations Cost Resduction
  - Printing/Publishing/Audiovisual/Travel
  - Advisory Committees
- Administrative Management Systems
  - Financial Systems
  - Pay/Personnel Systems
  - Admin. Payments
  - Property Systems

Planning and Communications Management

- Intergovernmental Relations
  - Coordination
  - Fed. Assistance Award Data System (FAADS) & Consolidated Federal Funds Report (CFFR)
- Congressional Relations
- Public Affairs
- Management Review Coordination
  - Develop Agendas/Data Needs
  - Schedule/Conduct Reviews
  - Coordinate with Program Divisions & Budget Review Division (BRD)
  - Scorekeeping of Results

Financial Management Division

- Federal Policy Admin.
  - Financial Management
  - Internal Control
- Grantee Management Policy
  - Cost Principles
  - Other Grants Policy
- Cash Management
- Credit Management
- Audit
- [* Implementation of Prompt Payment Act, FMFIA and Debt Collection Act]

[Source: March 6, 1984 OMB Memorandum for All Management Staff from Arlene Triplett, Associate Director for Management] and the Single Audit Act (PL 98-502) as well as the Federal Manager's Financial Integrity Act of 1982 and the Deficit Reduction Act of 1984. 208/

As announced in the President's FY 1986 management report to the Congress, the second Reagan Administration plans to alter somewhat its strategy with respect to management improvement and control. The Administration announced its intention to further its management reform agenda by proposing legislation to Congress in six categories: 1) productivity improvement; 2) reorganization; 3) fraud prevention; 4) payment integrity; 5) procurement; and 6) reduction in regulatory and paperwork burden. 209/

In its report, Management of the United States Government: Fiscal Year 1986, the Administration, while acknowledging that much remains to be done, asserted that it had embarked on a broad program "to ensure a continued, organized emphasis on management improvement" and that Reform '88 and other first-term management initiatives had resulted in "substantial progress." 210/ Needless to say, however, not all observers agree with this somewhat roseate assessment. Comptroller General Bowsher, for example, has suggested that the Administration's record reveals the limits of a highly centralized approach to management improvement, i.e., one in which principal reliance is placed on the central agencies (OMB, OPM and GSA) rather than the operating agencies for identifying key management issues and implementing management reforms. 211/ In its 1983 report, Revitalizing Federal Management, the National Academy of Public Administration (NAPA) expressed a similar view, asserting that the recent accretion of control systems has produced a situation in which procedure overwhelms substance. Administrative systems and increasingly centralized and detailed administrative procedures have produced a "managerial overburden" that has become a barrier to the responsiveness and cost effectiveness of government, in the Academy's view. NAPA recommended an enhancement of the federal managers' role and an appropriate amount of flexibility and discretion to allow them adequately to meet their responsibilities. 212/ Such recommendations

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208/ See: Bowsher, Charles A. Building Effective Public Management. The Bureaucrat, v. 13, no. 4, winter 1984-85. p. 26-29.

209/ See EOP and OMB, Management of the United States Government: Fiscal Year 1986. p. 63-74.

210/ Ibid., p. 9-10.

211/ See: Bowsher, Charles A. Building Effective Public Management. The Bureaucrat, v. 13, no. 4, winter 1984-85. p. 26.

212/ National Academy of Public Administration. Revitalizing Federal Management: Managers and Their Overburdened Systems. Washington, November 1983.

were clearly at odds with the centralizing thrust of the administration's management improvement efforts during its first term.

In what is perhaps the most negative academic assessment of the administration's approach to management, Salmon and Lund conclude that in its efforts to reverse the growth of government and reduce its role in society, the Reagan Administration has taken actions that have:

> . . . weakened more than strengthened the more permanent institutions of presidential management, has undermined the morale of the civil service, has taken a narrow auditing approach to improving management in the executive branch, has done little to encourage competent professionals to serve in the federal government, and has overlooked opportunities to strengthen existing partnership arrangements between the federal government and other institutions at the state and local level and in the private sector. 213/

It is important to note that not all observers of the Federal government have reacted so negatively to the Reagan Administration's management initiatives. For example, Newland has found several of the administration's management improvement efforts praiseworthy, particularly those aimed at improving management information systems, those used for coordinating management policy such as the cabinet councils, and several of the initiatives contained in Reform '88. 214/ At a broader level, Laurence E. Lynn has stressed the positive aspects of the leadership structure the Reagan Administration has used for managing the Executive Branch and warns critics that "[f]ailure to understand the Reagan experiment in public management will mean that a valuable lesson for future administrations -- administrations that may have more positive views of government -- will be missed. That lesson is that loyal and competent supporters in key executive branch positions can be a potent tool of administrative leadership." 215/ In Lynn's view, the importance of combining a reasonably coherent philosophy of government with: 1) the institutional apparatus of OMB to give it operational meaning; 2) the appointment of appropriately skilled cabinet and subcabinet officials who share the president's visions; 3) the delegation of authority over execution of the president's philosophy to these appointees subject to oversight by the executive office; and 4) the education of these appointees -- cannot be underestimated.

213/ Salamon, Lester M. and Michael S. Lund. Governance in the Reagan Era: An Overview. In Salamon and Lund, eds. The Reagan Presidency and the Governing of America. p. 23.

214/ Newland, Chester A. Federal Government Management Trends. The Bureaucrat, v. 12, no. 4, winter 1983-84. p. 3-13.

215/ Lynn, Lawrence E. Jr. Manager's Role in Public Management. The Bureaucrat, v. 13, no. 4, winter 1984-85. p. 20.

The Reagan Administration's goal of redirecting the size, scope, and focus of the Federal government has created some management problems by its very nature. In addition to the problems of employee morale and organizational coordination that arise in a cutback situation, decision-making and management strategy are impacted. 216/ Because of its responsibilities in these areas, OMB has had to grapple with some of these problems, but in the opinion of many observers, has done so with a distinctly centralized and technocratic approach to efficiency and economy in government that only compounds the problem. 217/ This approach reveals the limits of the administration's general management philosophy, these critics argue, and exposes the current weakness of its central management agency, OMB.

Reform Proposals

As the preceding chronology indicates, concern that OMB and its predecessor agency, the BoB, lacked the presidential support and institutional capacity deemed necessary to sustain management improvement efforts throughout the executive branch has prompted numerous calls for reform in the past. Rarely, however, have as many different proposals aimed at reorganizing responsibility for directing governmentwide management improvement activities been forwarded as are current at this time. Before beginning to outline the pros and cons of the five proposals briefly described at the outset of this report, it is important to identify two overriding criteria:

1) Is the proposed reform likely to produce the intended result; i.e., will it enhance federal management capacity and improve the productivity of program operations?

2) Is the proposed reform politically feasible? That is, is it likely to attract wide support or does it threaten to produce changes that are likely to generate intense opposition?

Both of these criteria suggest that finding a workable solution to the problem of strengthening management improvement in the executive branch is a complicated undertaking. This will become even clearer as we review the five proposals.

Proposal Number One: Upgrade the "M-side" of OMB

Those who propose this change seemingly seek to create a current counterpart to the so-called "Golden Era" of BoB's career staff during

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216/ For discussions of the problems of managing public organizations during rehrenchment, see: Levine, Charles H. (ed.). Managing Fiscal Stress. Chatham, N.J., Chatham House, 1980.

217/ See, for example: Heclo, Hugh. A Government of Enemies? The Bureaucrat. Fall 1984. p. 14.

the Truman and Eisenhower years when a series of career civil servants with experience in management served as Deputy Director. But this was a unique period in the history of the BoB. According to Terry Moe:

> In some sense, the Truman-Eisenhower years served to develop and institutionalize within the Brownlow framework a very traditional system of politics. The president was fundamentally reliant on the permanent government and the Bureau of the Budget. At the top, the president relied heavily on his cabinet in evaluating and deciding upon policy options. At lower levels, cabinet members were afforded almost total flexibility in the management of their own sectors of the bureaucracy, and processes absolutely central to governmental outcomes -- budgeting, legislative clearence, policy development -- were handled largely through organizational routines linking the permanent government and the Bureau of the Budget. In formal terms, "politics" was confined to the fledgling White House organization, the very highest levels of the bureaucracy, and the director of the Budget Bureau. The system was, in great measure, an institutional embodiment of neutral competence and the politics-administration dichotomy. 218/

Such a system of policy direction is hard to imagine today. In retrospect, though the problems of that decade were formidable indeed, the Truman-Eisenhower period was a time of fairly broad political consensus about the proper role and tactics of government management. It was also a period of sustained economic growth and low inflation. The day-to-day business of government could therefore be conducted by civil servants without the pressure of large deficits looming over the policy horizon.

In any event, changes at OMB and the White House since the 1970 reorganization have rendered proposals for a return to the "Golden Era" largely moot. The two most important changes from the point of view of evaluating options to the present structure of OMB concern the "politicization" of OMB and the importance of economic and budgetary issues on the president's agenda. The 1970 and 1973 reorganizations and subsequent personnel changes have introduced new levels of presidential and non-career appointees between the career staff of OMB and the President. The result has been greater centralization of policy direction so that OMB's activities are now more finely tuned to the President's policy objectives -- a tendency that has been reinforced under the Reagan Administration. (The establishment of the Cabinet Council on Management and Administration, for example, reflects a conscious effort to bring management policy decision-making into the White House.) In the process, the OMB career staff's definition of its role as a servant of "the presidency" rather than of an

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218/ Moe, Terry. The Politicized Presidency, p. 251-252.

individual president has been greatly diminished. Although members of the public administration community and former BoB officials have tended to lament the erosion of the notion that BoB/OMB should be an institutional embodiment of the "neutral competence" ideal, the change in the function of OMB signalled and reinforced by the introduction of political appointees is one that has served the political interests of recent presidents. It is a structure of governance that is unlikely to be undone by future administrations who will no doubt perceive that it works to the advantage of the incumbent president. 219/

The second (and more germane) reason for questioning the "Deputy Director for Management" solution is that it artifically "re-bifurcates" the budget and management functions of OMB and implicitly rejects the primacy of economic and budgetary matters in the hierarchy of presidential priorities. As long as the economy remains problematic and the budget is enormously out of balance, OMB's emphasis can be expected to focus on cost savings and budget-cutting. Insofar as management improvement efforts produce substantial cost savings they are likely to be considered a valuable, but still secondary concern for future administrations. 220/ Where cost savings are marginal or non-existent, management improvement is likely to be relegated to minor status. While some argue that this is a short-sighted approach and that better organization and management systems for the Federal government will eventually yield more productive and cost-effective programs, the reality is that a president's term is limited to eight years at most. Given an environment of economic instability and large deficits, budgetary decisions that promise short-term payoffs are bound to be more attractive to an administration than the often elusive savings promised by long-term management improvement efforts. Although an emphasis on cost-cutting need not rule out a "Deputy Director for Management" structure, many observers contend that given the president's politicial needs and the nation's economic problems, it is unrealistic to expect such a restructuring of OMB in the foreseeable future.

Proposal Number Two: Create an "Office of Management" (OM) by Combining the "M-side" Functions of OMB with OPM

This is a proposal favored by some at the time of the Civil Service Reform Act of 1978 (CSRA). While it was not part of the

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219/ See Nathan, The Administrative Presidency.

220/ To help ensure that important aspects of management are not ignored by OMB, some proponents of the "Deputy Director for Management" solution have suggested that appointments to the position of Deputy Director for Management be made by the President, subject to Senate confirmation, and/or that the various management divisions be given statutory charters spelling out their functions and responsibilities.

CSRA proposal, once OPM was established its first Director, Alan K. Campbell, moved to expand OPM functions in the areas of personnel and workforce management in directions that some observers felt overlapped with the traditional management analysis activities of OMB. Campbell argued that these activities were a natural extension of roles OPM assumed from its predecessor, the Civil Service Commission, in personnel management and reflected OPM's more clearly defined responsibilities in this area. However, under Campbell's successor, Donald J. Devine, OPM was redirected back to more tradition personnel functions such as recruiting, training, position classification, background investigations, and managing the government's retirement, health and disability programs. The capacity for management analysis -- both staff and data bases -- were greatly reduced or eliminated after 1980.

Proponents of this option argue that aside from equipment and facilities, most everything the government does involves personnel. Expanding OPM's functions to include a full range of personnel management analysis as well as other nonpersonnel concerns would be a comfortable extension of the agency's mission. Furthermore, they argue, the functions and personnel now assigned to the "M-side" of OMB would not be overwhelmed by the OPM staff and the its traditional core concerns, and management improvement issues would hence get the attention they deserve. Finally, an "Office of Management" that consolidated OPM and the "M-side" of OMB would have a broader reach and therefore assume more importance to the White House than either OPM or OMB's "M-side" do now.

Critics of this proposal cite two general reasons for their reservations. First, they argue that many, if not most of the central "M-side" functions have little to do with personnel either directly or indirectly. They cite, for example, OMB's responsibilities in the areas of procurement management systems and controls, management information systems, cash and credit management systems and oversight, government capital investment and management, intergovernmental relations, paperwork management, regulatory review and reform, and many others. If shifted to an OM with a large OPM component, they wonder, how comfortable a home will these functions find? Second, if only those OMB functions which have more obvious relevance to personnel like staffing and workforce management are shifted to a combined OM, what should be done with the remaining (nonpersonnel) "M-side" functions?

Those who doubt the workability of this option point to the core functions of OPM and observe that it operates more like a case-processing agency (i.e., handling routine personnel actions of all sorts) than a central staff agency with broad policy responsibilities. Most of OPM's 6,500 employees are involved in processing hundreds of thousands of forms concerned with the agency's various functions as a central personnel office, and only a tiny fraction of what the agency does can be considered to be in the area of management improvement activities. This was true even during the 1978 to 1981 period.

Critics of this proposal suspect that the "M-side" OMB staff would become lost in such a large bureaucracy with a totally different core mission.

The second salient objection has more to do with OPM's relations to Federal line agencies. Skeptics argue that the juridical (some say "watchdog") responsibilities of OPM have caused line managers in the agencies to view OPM with suspicion and hostility. For some managers, OPM is seen as a central regulator of the merit system, whose activities are sometimes seen as an impediment to management discretion and program effectiveness. Some fear that OPM's reputation and orientation would spill over to the "M-side" functions in the new OM, thereby breeding suspicion among agency managers that the "M-side" functions will be turned into more stultifying control devices than they are already perceived to be in some quarters. Instead of enhancing management improvement, these critics argue, an OM might turn into a impediment to initiatives begun at the agency level.

Proposal Number Three: Create an Office of Federal Management (OFM-I) (PPSSCC Recommendation)

In analysing the Federal government's management structure the President's Private Sector Survey on Cost Control, better known as the Grace Commission, concluded that:

> a major obstacle to improving the efficiency and effectiveness of the Government is the Federal structure itself. PPSS identified the need for a mechanism at the top level of Government to provide much greater emphasis on management improvement. Accordingly, PPSS recommended the establishment of an Office of Federal Management (OFM) in the Executive Branch of the President, responsible for policies and programs throughout the Government to improve financial management information systems, to coordinate reporting policies and procedures, to assure effective management of human resources and for planning and budgeting. 221/

Such a structure, the Commission believed, would overcome the lack of a central agency "responsible for overall Executive Branch administrative direction and policy setting" which contributes to "a long history of uncoordinated and often conflicting legislation and administrative actions." 222/ Major structural defects identified

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221/ President's Private Sector Survey On Cost Control (J. Peter Grace, Chairman). War on Waste. New York, Macmillan Publishing Co., 1984. p. 26.

222/ Ibid.

by the Commission include: (1) the lack of centralized financial and administrative management; (2) the lack of governmentwide management information; and (3) the lack of continuity in key management positions. Any solution to the general problem of management weakness in the Federal government, the Commission felt, must deal with these deficiences head on.

The PPSSCC outline of its structure for OFM begins with the observation that: "The overall management function delegated to OMB was originally intended to provide the needed direction and coordination of Executive Branch management activities. PPSS findings indicated, however, that this objective has not been achieved. OMB continues to be preoccupied with the annual budgetary process, which claims most of its resources and drives most other activities." 223/ To bring a "businesslike approach" to the Federal government, the OFM would be responsible for policy development and direction in the areas of financial management, budgeting and planning, human resources, and "administration" (including information resources, management, procurement and property management, and management improvement). OFM would include the budget functions of OMB and serve as the President's management staff for effecting major improvements in processes and systems, communications and information flow. "It would establish a unit responsible for systematically identifying and implementing management improvements on an ongoing basis, an essential function for sustaining such improvement. . . ." 224/ Under this plan, OFM would be the central staff agency of the executive branch. GSA and OPM would report directly to OFM for policy direction in developing and implementing procedures and regulations. According to the Commission: "Such a reporting relationship is based on the general private sector model that employs a corporate staff to ensure a coordinated administrative structure." 225/

To deal with inadequacies in accounting, financial management and other management information areas, OFM would be charged with developing common government-wide ADP software systems and other procedures to allow the standardization of government-wide practices and information bases. To reduce the high turnover of government managers (usually political appointees), the PPSSCC recommended that key OFM officials be appointed on a long term basis (15 years in the case of the Senior Financial Officer) and that a new "contractual" approach be used to hire and reward second-tier OFM officials in the fields of financial management, human resources, administration, budget and planning, and management improvement.

223/ Ibid., p. 33.

224/ Ibid.

225/ Ibid.

The PPSSCC's OFM proposal is an ambitious plan that is intended to address serious and long-standing problems of Federal management. However, as one would expect, it has met with substantial criticism. The objections can be summarized under four main headings: (1) it represents another form of centralized management direction which has failed to guarantee management improvement in the past; (2) OFM would be bound to be dominated by the budget division just as the "M-side" of OMB is now; (3) the proposal subsumes OPM and GSA, two independent agencies which should remain independent and whose Directors should report to the President; and (4) the 15-year term proposed for the OFM Senior Financial Officer is unrealistic given the political importance the job would assume to the incumbent president.

The first criticism of the PPSSCC's OFM proposal is that its implementation would exacerbate a trend toward centrally-directed management improvement efforts in Federal government -- an approach that many contend has generally failed to produce any important or lasting benefits. Comptroller General Bowsher, commenting on the results of a GAO review of management improvement efforts during the decade of the 1970s, recently observed:

> This record [of failure of the traditional central agency focus] is the result of the inherent limits on what can be done through the efforts of central agencies. Their drawbacks include:
>
> First, the centrally directed approach causes unavoidable confusion between issues of program policy and program execution. Successful implementation depends on effective management support.
>
> Second, the centrally directed approach allows those responsible for day-to-day management of government programs and agencies to escape accountability for the results of their actions.
>
> Third, the centrally directed approach diverts energy and attention from the operating agencies, where the problems really are, and where effective solutions must be found and implemented. 226/

Similarly, in summing up its objections to the PPSSCC OFM proposal (before proposing its own version), a draft paper circulated by a panel of the National Academy of Public Administration (NAPA) concluded:

> The current concentration of strength in the central agencies has not worked. It has not produced effective management, and it has not kept the government up to date with the best contemporary management concepts and practices. It has not even prevented waste and abuse, nor prevented the deterioration of current management

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226/ Bowsher, Charles A. Building Effective Public Management. The Bureaucrat, v. 13, no. 4, winter 1984-85. p. 26.

> capacity. The 2,478 reform recommendations of the Grace Commission, and the breath and scope of the administration's Reform '88 program are telling witnesses to the degree to which the Federal government has failed to keep on top of its problems. Further centralist concentration as proposed by the Grace Commission does not seem to be the needed answer, nor is it at all clear whether the Congress, which is itself ambivalent about Executive Office power, especially in OMB, would be willing to permit such a "super OMB" to come into being to exert even greater centralist authority.
>
> Both Comptroller General Bowsher and the NAPA study report [Revitalizing Federal Managers: Managers and Their Overburdened Systems, 1983] propose a totally different view of the role of the central agencies -- one in which the "center of gravity" of government management reform is at the agency level, and one in which the central agencies function in a way which aids and facilitates the individual and group efforts of thousands of managers and supervisors to improve their own management, and at the same time, join in efforts which contribute to common government-wide solutions. This is decentralization rather than centralization, and it is a realistic recognition that most management issues . . . really must be attacked at agency levels 227/

In short, critics of the PPSSCC's OFM proposal find much in the recent history of centrally-directed management improvement efforts to suggest that a "super OMB" is not likely to yield the benefits that the Grace Commission anticipated.

A second concern of critics of the PPSSCC's OFM proposal focuses on the likely dominance of the new agency by its "budget-side." Again, the NAPA panel has written that:

> At the heart of the argument is the issue of the linkage between management and budget. In the history of the old Bureau of the Budget, and indeed in the creation of the current OMB, it has been argued that this combination would have great value; that the processes of budget examination would identify many of the problems of government on which OMB's management experts would work. In turn, management reform and improvement ventures would derive their real power and influence from being linked with the budget, and in the ultimate case, would have

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227/ National Academy of Public Administration, Panel on Executive Organization and Management. A Proposal for Creation of The Office of Federal Management. Draft, April 1985. p. 7.

> influence in government only from that linkage. It appears that this "power by association" continues to be a major factor in the PPSS approach.
>
> The NAPA ["Revitalization" Report] panel members, many of whom supported the creation of OMB, reluctantly rejected this perception. In its report, the panel stated that "the disabling systemic weakness is that the budget and related national economic issues have usually proved to be all-consuming. In recent years it has become so intense that it has almost totally preoccupied critical OMB leadership, draining away time, interest, and staff, and having a chilling effect on many management initiatives. Therefore, even when an Administration such as that of President Reagan seeks to take initiative for management reform across a broad front, it finds OMB no longer has the talent base nor the recognized capability for leadership to sustain such efforts." 228/

The Academy panel and other critics conclude that it does not appear likely that the President's preoccupation with the budget will decline in the forseeable future. As a consequence, even in a new OFM with a separate Management Improvement division and other kindred units, the budget function is likely to overshadow all others in priority, importance and influence.

The third main objection to the PPSSCC's OFM proposal concerns the fate of OPM and GSA. The Commission argued that:

> GSA and OPM should report directly to OFM for policy direction in carrying out their primary role in developing procedures and regulations in their respective areas of responsibility. This recommended reporting relationship is based on the general private sector model that employs a corporate staff to ensure a coordinated administrative structure. GSA and OPM should transfer to departments and agencies the responsibilities for all operating functions (for example, maintenance of office buildings) as are cost justified. 229/

Such an arrangement, the Commission argued, would strenthen OPM's and GSA's responsibilities while accelerating a trend in recent years to delegate more operating responsibility to the agencies. This also follows common practice among large corporations where the central

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228/ Ibid., pp. 6-7.

229/ President's Private Sector Survey on Cost Control. Task Force on Federal Management Systems. Report on Federal Management Systems. Washington, PPSSCC, September 30, 1983. p. vi and vii.

office provides centralized services when they are obviously cost effective and delegates to the operating divisions the flexibility to set personnel policy and purchase from vendors when the cost is lower than the corporate-wide price for the same item. 230/

Critics of this idea argue, first, that the Federal government and the business corporation are sufficiently different in functions, responsibilities and procedures to make one a poor model for shaping the other. Second, they argue that the functions of OMB, OPM, and GSA are logically separable and that the historical reasons for their independence remain compelling. Therefore, they contend that OPM and GSA should not be subsumed under a super agency that will surely be dominated by the budget staff. These critics add that the present pattern of interaction among these agencies requires them to work together and balance their interests off against each other and broad national policy. This interplay, they argue, serves the nation well and probably does so better than would a new OFM along the lines suggested by the Grace Commission.

Finally, concern for the short average tenure of non-career executives (18 to 24 months) and constraints on the recruitment and retention of top quality executives (such as conflict-of-interest requirements, media pressure, frustration with the bureaucracy and lack of financial incentives) led the Commission to recommend that key OFM officials should be appointed on a long-term basis and have strong management backgrounds. 231/ While the Director of OFM would be appointed by and serve at the pleasure of the President (with Senate confirmation), the "second tier" of OFM officials (heads of each functional area: i.e., financial management, human resources, administration, management improvement, and budget and planning) would be appointed on a long-term contractual basis "which would provide them with the needed security and tenure to carry out long-term improvements and preserve the ability of the President to have a loyal and compatible team." 232/ Under this plan, the Senior Financial Officer would be appointed on a model similar to the Comptroller General (15 years) and the other functional heads would be selected for at least a five year term under contracts. The President may remove these officials at any time, but they will have needed security (i.e., a five-year contract) to encourage them to carry out long-term assignments.

Critics of this arrangement argue that it is politically naive. No President, they argue, would want an important operating member of his cabinet appointed by a predecessor. A new president, they contend, will either fire appointees inherited from his predecessor,

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230/ Ibid., p. 16.

231/ Ibid., p. x.

232/ Ibid., p. 26.

reassign them to meaningless tasks, or simply restructure reporting relationships to isolate them and "freeze" them out of policy issues. In short, these critics argue that while the turnover issues the PPSSCC identifies are real enough, the proposed solutions are neither workable nor feasibile.

In sum, the PPSSCC's Office of Federal Management proposal is an ambitious proposal for dealing with the perceived weaknesses of Federal management systems. However, it is noteworthy that this is the one major recommendation of the Commission that the Reagan Administration has not yet taken a formal public position on. 233/

233/ Testifying before a House appropriations subcommittee in the spring of 1984, however, then-Director of OMB David Stockman frankly acknowledged that he regarded the Grace Commission's OFM proposal as a "bad recommendation" and expressed the hope that "we never implement it." His subsequent remarks in this context warrant citation in full:

> I am talking about the specific recommendation regarding an Office of Federal Management to take the place of the management wing of OMB. The reason I feel strongly about it is the reason that . . . I hope every member of this subcommittee would understand and share. You cannot manage the Federal Government with its 2 million employees and the breadth and scope of the functions, bureaus and agencies ... based on 1,000 or 2,000 people in some central office of management, who think they can go in and micromanage the government, go down to some base in Arizona and say you need to do an A-76 for your janitorial services, or go into some agricultural research test facility and say you ought to be contracting this out, or ... using 50 employees instead of 10, and a variety of other things. [...] You would just bring the government to a screeching halt. The government is bad enough in terms of its inefficiency and lack of responsiveness, but the idea of a Super Office of Management would just make it worse.
>
> What we can do, and what we are doing at OMB, is to provide (a) leadership, and (b) standards, that pertain to management practices, that can be sent out to the agencies for implementation on the basis of their case-by-case decisions.

U.S. Congress. House. Committee on Appropriations. Subcommittee on the Treasury, Postal Service, and General Government. Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1985. Part 3 -- Executive Office of the President. Hearing, 98th Cong., 2nd sess. March 14, 1984. Washington, U.S. Govt. Print. Offc., 1984. p. 144.

Proposal Number Four: An Independent "Office of Federal Management" (OFM-II) (NAPA)

In the draft paper circulated by a panel of the National Academy of Public Administration mentioned earlier, it has also been proposed that an Office of Federal Management be established, albeit a much smaller one than that proposed by the Grace Commission. In this scheme, OFM would be an independent office in the Executive Office of the President, reporting directly to the President. Its Director would be a Cabinet Officer at Executive level I (an eqivalent rank to the OMB Director and the Departmental Secretaries).

Stressing the importance of direct and continuing access to the President, the NAPA panel's paper argues that OFM would assume importance on the President's agenda if it were given responsibility for preparation of presidential orders, proclamations and other presidential directives, and for the development, review, and co-ordination of Administration legislative initiatives in the management area, as OMB does now. In the NAPA panel's view: "OFM's strength would lie in its role as the management agent of the President, and its ability to act on behalf of the Pesident on a broad government-wide basis. . . . OFM [would] be the catalyst which galvanizes effective management through government . . . ." 234/ According to the NAPA panel's paper, "OFM's role should be to facilitate; to institute, promote, and assist and not primarily to regulate, control or audit." 235/ The establishment of an independent OFM "would give the Federal establishment something which . . . it lacks -- a full time, committed, influential organization which is the government's advocate and leader for better management . . . . OFM's Director would have the attention of the President, the Cabinet and the Congress and would not be diverted by the budget or anything else . . . . OFM should become the major leadership force for restructuring, redesign, and rationalization of the institutional architecture of the Federal establishment." 236/

Under the NAPA panel's proposed model, OFM would assume the "M-side" functions of OMB but expand them to include other management improvement activities that concern the management of Federal programs and not just staff functions. For example, OFM would evaluate program design, program planning systems, program management techniques, productivity, quality control, and program cost-effectiveness. In short, "OFM should be the government's expert on program design and operations and should be able to provide start-up (or phase-out)

234/ NAPA, A Proposal for Creation of the Office of Federal Management, p. 9.

235/ Ibid., p. 10.

236/ Ibid.

assistance for agencies or programs." 237/ OFM's authority would hinge on the statutory authority for management presently granted to OMB, administrative authority gained through management reviews and circulars, the influence of its research, and its encouragement of management plans and innovative demonstration projects in the agencies.

There have been several reservations and objections noted about the NAPA panel's proposed model for an OFM. Generally, they fall into three categories: (1) That "management" is now, and will continue to be, a secondary concern for the President. As a consequence, there is little reason to suppose that even if such an OFM were created, he is likely to give it much attention; (2) By expanding the functions of the "M-side" of OMB in the new OFM, the new agency will have responsibilities -- and powers -- that will overlap with the "B-side" of OMB, GSA, and OPM as well as the administrative staffs of the departments and agencies. Such an arrangement is likely to create conflicts and jealousies, eventually turning the "catalyst" role of OFM back into that of a controller, regulator, and auditor viz-a-viz the agencies; And, (3) contrariwise, by being decoupled from the budget process, there is a risk that OFM will become a "toothless tiger" conducting lengthy management studies which will be ignored by the agencies. People who hold this reservation reason that because OFM is likely to lack the attention of the President it would be unable to exercise its statutory authority and therefore be unable to command the attention of the agencies for its administrative proposals.

Proposal Number Five: Create Two Entities - An "Office of Federal Management Policy" (OFMP) and an Independent "Office of Federal Operations" (OFO)

This option is an idea that had reached the "trial balloon" stage in several circles during the summer and fall of 1985. The concept is to take the management policy functions of the Grace Commission proposed for its OFM and confer them on an "Office of Federal Management Policy" which would be housed in the Executive Office of the President with the Director reporting to the President. Such an office would therefore contain OMB's "M-side" functions, including responsibility for management improvement and financial management, and OPM's and GSA's policy responsibilities. In order to avoid having a large operating agency in the Executive Office of the President, OPM and GSA operations would be combined into a second agency, the "Office of Federal Operations," which would be an independent agency in the executive branch much as OPM and GSA are now.

237/ Ibid., p. 12.

Proponents of this idea argue that it solves two main problems inherent in the other proposals. First, it combines Federal management policy direction in one agency, thereby eliminating conflicts and inconsistences between OMB, OPM, GSA, and the departments and agencies while allowing management improvement activities to be developed closer to the President's agenda-setting apparatus. Second, it does not encompass the "B-side" of OMB and therefore avoids the creation of a "super agency" dominated by budgetary concerns.

Although this proposal has yet to be formally circulated at this writing, some reservations about it have already been expressed. First, skeptics wonder whether some workable demarcation can be agreed upon between policy and operations at GSA and OPM. They argue that no matter how the agencies will be divided, it will be an artifical separation causing coordination problems later. Second, they point out, it is unclear where the new "Office of Federal Operations" will fall in the executive branch; i.e., to whom will its Director report and with what effect? Third, they observe, the Office of Federal Management Policy, while likely to be more influential than NAPA's proposed OFM, may suffer similar problems of second-class citizenship in the Cabinet and could also fail to attract Presidential attention.

In sum, this proposal addresses several of the problems of workability and feasibility inherent in the present arrangement and in several of the other four proposals. Nevertheless, it is still only a sketch of an idea whose own workability and feasibility can only be guessed at until a more complete proposal is circulated.

These five proposals vary in specificity and political support. It is difficult, therefore, to generalize about their merits and limits at this time. Taken as a whole, however, they are indicative of growing disenchantment in some circles with the present structure for handling management improvement efforts at OMB. Yet, based on the preceeding discussion, it would appear that none of the five proposals promises with certainty to solve the central problems of management improvement that have troubled BoB/OMB for years. Furthermore, none have evoked the enthusiastic support of the Reagan Administration. Instead, the Administration has pointed to its Reform '88 effort, the operation of its the Cabinet Council on Management and Administration (CCMA), its efforts to implement the Grace Commission's recommendations, and its detailed Management Report of the President, FY 1986, as well as its use of management reviews to link management and budget concerns, as evidence that all is well with the management side of OMB. Nevertheless, the issue of where to place responsibility for management improvement remains unsettled in the minds of many people. Therefore, the search for the right structure for facilitating management improvement in the Federal Government seems destined to go on for some time to come.

ASSESSMENT OF ORGANIZATIONAL POLICY AND PLANNING FUNCTION IN OMB

Ronald C. Moe*

Introduction

The term "management" encompasses a wide variety of functions. There is, at present, no consensus on what attributes are essential to managing the Federal Government. Opinions vary greatly on whether OMB is performing well in its management role. If management is principally conceived of as "control," then most observers agree that OMB appears to be managing many agencies and programs reasonably well through its regulatory review processes. However, if management is principally conceived of as providing the organizational planning, human and material resources, and leadership to assist agencies and managers to accomplish their statutory mission, then critics assert that OMB is falling short.

The National Academy of Public Administration, in a 1983 Report on Federal Management, concluded:

> In its earlier years, agencies came to rely on BoB/OMB as a key source of government-wide initiatives for keeping Federal management modern and up-to-date. In recent years, however, there has been a growing concern that even while OMB continues to be capable of occasional excellent performance, it has irretrievably lost its overall effectiveness as government-wide leader in management affairs. 1/

The debate over whether OMB is succeeding, or failing, as a central managerial agency is intensifying with Members of Congress taking increased notice. One of the component issues in this general debate involves the role, or non-role, of OMB in matters of organizational structure and doctrine, and of administrative coordination. Who, if anyone, is taking responsibility for organizational questions at OMB? Who, if anyone, is supporting the President in his general manager responsibilities?

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1/ National Academy of Public Administration. Revitalizing Federal Management: Managers and Their Overburdened Systems. Washington, National Academy of Public Administration, 1983. p. 11.

Within a properly functioning central managerial agency, according to the NAPA study, there must be a means for developing, informing, and enforcing a Presidential philosophy and strategy on cross-cutting administrative issues. One such cross-cutting issue involves organizational structure for the performance of Federal responsibilities.

Organizational Theory as Part of Management

The management of the Federal Government is of concern to many people. There is no dearth of critical analyses. Politicians, practitioners, and scholars are not reluctant to offer proposals for "management improvement." Most contemporary studies of government management, e.g., Grace Commission reports, recognize that organizational structure plays some role in management, but beyond this observation these reports have little to say. Organizational questions tend to be viewed as legalistic, uninteresting, and tangential to "good management." This has not always been the case.

From the turn of the century up through the early 1970s, great faith was placed in proper organizational structure as a prerequisite for good management. The definition of "proper" organizational structure was generally traceable to the precepts of the "scientific management" movement during the Progressive Era. The scientific management school held that there was always "one best way" to organize and manage an activity, a belief that became central to the good government movement.

The values of the scientific management movement were reflected in successive national study commission reports beginning with the Commission on Economy and Efficiency (1912), and continuing on down through the 1937 President's Committee on Administrative Management (Brownlow Committee) and the two Hoover Commissions (1949 and 1955). 2/ Certainly there was more to good management than simply the right organizational structure but organization was critical in their view and hence reform tended to be equated with reorganization. Proper reorganization, however, required proper theory.

2/ For a discussion of the role and contribution of successive Federal study commissions, consult: Emmerich, Herbert. Federal Organization and Administrative Management. University, Alabama, University of Alabama Press, 1971. U.S. Congress. Senate. Committee on Governmental Affairs. The Federal Executive Establishment: Evolution and Trends. [Ronald C. Moe] Committee print. 96th Cong., 2d sess., 1980.

The reports of the Brownlow Committee and the first Hoover Commission provided the necessary theoretical foundation. The issuance of the Brownlow Committee report has been described as the "high noon of orthodoxy in public administration theory in the United States." 3/ The principal thesis of the report was that the executive branch ought to be reorganized to create an integrated, hierarchical structure with the President as general manager. The report proposed, among other things, that some 100 independent agencies, administration, boards, and commissions be reorganized and placed within 12 executive departments reporting directly to the President. Another recommendation of the Committee, successful in this instance, was that an Executive Office of the President (EOP) be established. In 1939, the Bureau of the Budget (BoB) was moved from the Treasury Department to the new EOP.

After World War II, both President Harry Truman and Congress were interested in reviewing the organization and management of the executive branch and agreed to create a commission headed by former President Herbert Hoover to conduct a comprehensive review. The Hoover Commission, as it came to be known, issued its report in 1949 and said: ". . .[W]e must reorganize the executive branch to give it simplicity of structure, the unity of purpose, and the clear lines of executive authority that was originally intended under the Constitution." 4/

The reports of the Brownlow Committee and the first Hoover Commission are noteworthy in part because they symbolized the then dominant view that the cornerstone of good management is proper organizational structure. Speaking of the first Hoover Commission, one-time BoB career executive Harold Seidman states:

> The Commission's report on 'General Management of the Executive Branch' represents the most categorical formulation of the orthodox or classical organization doctrine derived largely from business administration and identified with the scientific management movement during the early decades of this century. . . . Government organization is seen primarily as a technological problem calling for 'scientific' analysis and the application of fundamental organizational principles: a single

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3/ Sayre, Wallace S. Premises of Public Administration: Past and Emerging. Public Administration Review. v. 18. Spring 1958. p. 113.

4/ U.S. Commission on Organization of the Executive Branch of the Government. General Management of the Executive Branch. Washington, U.S. Govt. Print. Off., 1949. p. viii. For a discussion of the impact of the first and second Hoover Commissions, consult: Moe, Ronald C. The Hoover Commissions Revisited. Boulder, Colorado, Westview Press, 1982.

rather than a collegiate executive; limited span of control; unity of command (a person cannot serve two masters); a clear distinction between line and staff; and authority commensurate with responsibility. 5/

It was one of the responsibilities of the Bureau of the Budget to maintain and implement the Brownlow/Hoover doctrine of organization and management. This proved to be a difficult task because the natural inclination of the bureaucracy and of Congress is toward dispersal of functions, attenuation of accountability, and organizational fragmentation. These difficulties notwithstanding, the organization and management activities were "probably. . .the major source of BoB's fame during the 1940s." 6/ The story since the 1940s, however, has been one of decline until today the OMB has no unit directly responsible for organizational issues government-wide. 7/

General Staff Functions

During the 1940s and 1950s, BoB provided an institutional framework for the performance of basic, government-wide management functions. 8/ Prior to 1952, BoB had a Division of Administrative Management which was a self-contained unit whose director reported to the Director of the Bureau. This Division, in turn, was divided into two branches, one of which, the smaller, was concerned with government-wide organizational and procedural matters. This section prepared, among its other responsibilities, Reorganization Plans to be submitted by the President to Congress. The larger section was principally concerned with improving management systems and handling management problems suggested by the President.

5/ Seidman, Harold. Politics, Position, and Power. 3d ed. New York, Oxford University Press, 1980. p. 4,5.

6/ Mosher, Frederick C. A Tale of Two Agencies: A Comparative Analysis of the General Accounting Office and the Office of Management and Budget. Baton Rouge, Louisiana State University Press, 1984. p. 107.

7/ In 1982, OMB disbanded its two management-oriented units, the Government Organization Division and the Federal Personnel Policy Division. OMB Memo No. 82-37 and OMB Memo No. 82-39. OMB Reorganization Hits Management Side. Public Administration Times. June 15, 1982. p. A-1.

8/ For an informative history of the Bureau of the Budget and its successor organization, the Office of Management and Budget, consult: Berman, Larry. The Office of Management and Budget and the Presidency, 1921-1979. Princeton, Princeton University Press, 1979.

For various reasons, including the quality of its staff, Budget Director support, close ties to White House staff, and Presidential trust, the Division enjoyed considerable influence during the 1940s. Not everyone was pleased, however, with the Division of Administrative Management. Internal BoB studies questioned its efficacy and generally called for closer relations, even integration, with the budgetary side of the Bureau. Also, as the Bureau grew, the functional basis for organization tended to increase conflict between the units because of the seemingly duplicative responsibilities over agencies.

> Finally, on March 14, 1952, Budget Director Frederick J. Lawton ordered a reorganization that set up five operating divisions, each covering a broad spectrum of federal programs, and four staff offices on the old functional basis, each to handle government-wide problems and to coordinate, guide and assist the operating divisions in its sphere. 9/

One of the new staff offices resulting from the 1952 reorganization was the Office of Management and Organization (OMO). This small office was charged "to provide leadership on the larger managerial questions of government-wide organization, interagency relationships, and common administrative processes such as procurement, work measurement, transportation and travel, and others." 10/

The 1952 BoB reorganization generally titled the organization toward the budget side of their responsibilities. The thrust was to integrate management personnel into management units within each of the four major program areas. They were to work with the examiners. "The few management-oriented staff that remained in the central organization (OMO) — about 10 percent of the BoB staff — rocked along with government reorganization plans, servicing outside agencies from time to time, backing up financial improvement programs. . . and developing special studies." 11/ The OMO was concerned with problems that warranted Presidential-level attention, but which did not fit into any existing department or agency. Typical problem areas assigned to this unit were the territories (bringing Alaska and Hawaii into the Union), government corporation oversight, new agency creation, and oversight of interagency agreements. Frequently, careerists responsible for these subject fields had direct contact with the President. During the 1950s, the OMO staff was also staff to the on-going President's Advisory Committee on Government Organization (PACGO).

9/ Mosher. A Tale of Two Agencies. p. 106.

10/ Ibid. p. 106-107.

11/ Mosher. A Tale of Two Agencies. p. 107.

With the advent of the "activist" presidencies of Kennedy and Johnson, dissatisfaction with BoB's alleged "negativism" grew. Presidential aides, in particular, chaffed under the requirements to follow organizational doctrine and government-wide management regulations. Reports followed in succession recommending that the BoB be re-structured again and re-oriented to become more "responsive" to Presidential policy priorities. 12/ There was conflict between the White House aides and careerists in BoB not only in style and objectives, but in cultural terms as well. Harold Seidman noted:

> The Bureau of the Budget admittedly had its institutional biases. Its style was negative and critical, rather than positive and creative. But this reflected the fact that its assigned role was essentially negative. The development of new programs and advocacy of increased spending were viewed as inconsistent with the bureau's basic mission. This 'negativism' inevitably caused conflicts with activists on the White House staff mainly concerned with promoting the president's political interests. 13/

Careerists were exponents of and believers in the philosophy of "neutral competence." To careerists, their loyalty was to the Presidential institution, not to a particular President. Hugh Heclo defined "neutral competence" in these terms:

> In the Anglo-American democracies, neutral competence is a relatively recent growth and corresponds roughly with the appearance of a higher civil service about a century ago. It envisions a continuous, uncommitted facility at the disposal of, and for the support of, political leadership. It is not a prescription for sainthood. Neutrality does not mean the possession of a direct-dial line to some overarching, nonpartisan sense of the public interest. Rather it consists of giving one's cooperation and best independent judgement of the issues to partisan bosses — and of being sufficiently uncommitted to be able to do so for a succession of partisan leaders. The independence entailed in neutral competence does not exist for its own sake, it exists precisely in order to serve the aims of elected partisan leadership. Nor is neutral competence merely the capacity to deliver good staff work to a political superior, for a major part of this competence lies in its ability to gain compliance from lower-level officials. The practical knowledge of government and the broker's skills of the governmental marketplace that makes one's advice worthy of

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12/ For a discussion of both internal and external studies of the Bureau of the Budget during the 1950s and 1960s, consult: Berman, Larry. The Office of Management and Budget That Almost Wasn't. Political Science Quarterly. v. 92. Summer 1977: 281-304.

13/ Seidman. Politics, Position, and Power. p. 226.

> attention. Thus neutral competence is a strange amalgam of loyalty that argues back, partisanship that shifts with the changing partisans, independence that depends on others. Its motto is 'Speak out, shut up, carry up, carry out.' 14/

During the 1960s, acceptance of the neutral competence model eroded as arguments favoring greater Bureau responsiveness to incumbent Presidential priorities gained support. Interest in the organizational aspects of management generally gave way to short-term policy and program objectives. Directors of the Bureau came increasingly to view themselves more as personal advisors to the President than as the head of a staff agency. "The result," according to Hugh Heclo, "was to identify OMB [BoB] more as a member of the President's own political family and less as a broker supplying an independent analytic service to every President." 15/

With the shift toward "political" values in BoB came a renewed emphasis on management but not the traditional definition of management. The newer brand of management meant something different to each individual who offered an opinion. Generally speaking, however, management came to be associated with "systems" or "processes", often borrowed from the private sector. Thus, there were successive efforts to improve management by "systems" such as the Planning-Programming-Budgeting System (PPBS), Management By Objectives (MBO), and Zero-Based Budgeting (ZBB). After brief flurries by BoB/OMB to impose these systems government-wide, enthusiasm waned and still another management approach was sought. 16/

Throughout this period the role of the "informed generalist" was downgraded. Business-oriented specialists were brought in for relatively short periods to apply their techniques before returning to the private sector. The values of the Hoover Commission respecting organizational structure were first ignored, then gradually supplanted by more process-oriented management values. With the election of Richard Nixon in 1968, the time appeared propitious for change.

14/ Heclo, Hugh. OMB and the Presidency -- The Problem of 'Neutral Competence.' Public Interest. Winter 1975. p. 81-82.

15/ Ibid. p. 87.

16/ Randall, Ronald. Presidential Use of Management Tools from PPBS to ZBB. Presidential Studies Quarterly. v. 12. Spring 1982: 186-193. Speaking of "management systems" tried in the executive branch, Frederick Mosher commented: "It is of some interest to note that none of these efforts -- or gadgets -originated in BoB/OMB." A Tale of Two Agencies. p. 117.

Office of Management and Budget: Formative Years

Soon after taking office in 1969, President Richard Nixon announced the appointment of the President's Advisory Council on Executive Organization to be chaired by businessman Roy Ash. The Ash Council submitted a number of memorandums to the President that served as the basis for the legislative proposals to reorganize much of the executive branch which President Nixon submitted to Congress on March 15, 1971. 17/ In his proposal to Congress, the President sought to abolish seven existing domestic departments and to create in their place four new departments based on function, i.e., Human Resources; Community Development; Natural Resources; and Economic Affairs. Although some hearings were held, no legislation was passed on the departmental proposals.

The Ash Council was more successful, however, in promoting the idea to reorganize the Executive Office of the President (EOP). The Council recommended that a Domestic Council be established to provide the White House coordination of major policy initiatives and to reconstitute the Bureau of the Budget into the Office of Management and Budget (OMB). The President proposed both these recommendations by way of Reorganization Plan No. 2 of 1970, 18/ which Congress accepted after considerable controversy. 19/

Although the stated purpose of the reorganization of the old BoB was to enhance the "management" side of the agency's responsibilities, the opposite occurred. Management, insofar as it was impacted by the reorganization, tended to shift toward the White House political staff.

It is ironic that the effects of all these changes in 1970 were perversely opposite to the professed intent of their initiators. Schultz [George P.], first director of OMB, took an office in the White House and became a principal advisor to the president on policy matters, leaving him little uninterrupted time for leadership of OMB. Ehrlichman [John], first director of the Domestic Council, was soon immersed in operating problems and calling on individual members of the OMB staff for assistance. Furthermore, while 'management' was given a place, indeed first place,

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17/ U.S. Executive Office of the President. Office of Management and Budget. Papers Relating to the President's Departmental Reorganization Program. Washington, U.S. Govt. Print. Off., 1971.

18/ Reorganization Plan No. 2 of 1970. Statutes-at-Large. v. 84. p. 2085. July 1, 1970. Carey, William D. Reorganization Plan No. 2. Public Administration Review. v. 30. Nov/Dec. 1970: 631-634.

19/ U.S. Congress. House. Committee on Government Operations. Disapproving Reorganization Plan No. 2 of 1970. H.Rept. 91-1066. 91st Cong., 2d sess. Washington, U.S. Govt. Print. Off., 1970.

in the title of what had been the Bureau of the Budget and was separated from, and given status nearly equal to, the budget on the organization chart, its importance in OMB's work declined, though with some interruptions, for at least the following seven years. 20/

Under Schultz's successor, Roy Ash, OMB repeated its 1952 experiment of integrating management personnel into the management of the four program areas with much the same results. Although new personnel were hired with managementstyle titles, they generally worked on budgetary problems. The remaining overall management unit, now styled a special studies unit, was gradually downgraded and its functions dispersed. Frederick Mosher describes this period:

> [A] number of those [management] functions regarded as administrative details were transferred to the General Services Administration (GSA), along with the personnel who performed them in OMB. These included activities related to procurement policy, travel regulations, and property management, and some in automatic data processing, financial management, grant simplication, and management systems. Dwight Ink, theretofore assistant director of OMB on the management side, was transferred to GSA as its deputy director. These responsibilities were never fully assimilated within GSA, and their transfer aroused vehement protests among members of Congress. By early 1976, most of these functions and the personnel assigned to them were returned to OMB, where they did not receive a very warm welcome. Some observers believed that the purpose behind both those actions -- the setting up of management divisions and the transfer of personnel to GSA -was to provide vacant positions in OMB that could be filled by persons responsive to the new OMB leadership. 21/

After the major effort put forth by the Nixon Administration to fundamentally alter the organization of the executive branch failed, belief in the political utility of structural reorganization as the basis for improving the management of the Federal Government dropped precipitously. The Ash Council recommendations, while not stating so directly, had been based in large measure on the "orthodox" doctrines of public administration. The amount of political capital spent on trying to convince Congress of the value of "reorganizing the executive branch" had been high with very little return, except for the creation of OMB. Political executives seemed to "sour" on organizational issues and crosscutting management approaches and sought instead to effect "changes in direction" in the bureaucracy through political avenues rather than the traditional statutory or the more recent "process management" routes.

20/ Mosher. A Tale of Two Agencies. p. 113.

21/ Ibid. p. 114.

Richard Nixon came to believe that if change in direction of government were to occur in his second term, it would not come from structural reorganization, but from presidentially-oriented political appointees at the agency level. Nixon would attempt to achieve through political and administrative strategies what he had been unable to achieve legislatively. His would be an "administrative presidency." Richard Nathan explains:

> This plan for an 'Administrative President' helps to explain Nixon's entire domestic policy. The roots of this plan were in the experience of the first term. The President and John D. Ehrlichman, his chief domestic advisor, came to the conclusion sometime in late 1971 or early 1972 that, in most areas of domestic affairs, operations constitute policy. Much of the day-to-day management of domestic programs -- regulation writing, grant approval, personnel deployment, organization and reorganization, program oversight, and budget apportionment--can involve high policymaking. Getting control over the processes was the aim of the President's strategy; and judged against the lack of legislative success on domestic issues in his first term, there are grounds for concluding that this was a rational objective. 22/

The strategy was to place "loyal" political appointees in as many executive and management positions as possible. Career executives were generally viewed as unreliable and negative and therefore should not be assigned key positions in the Administration.

Under Nixon, after 1972, and through Gerald Ford's tenure, the concept of "organizational policy and planning" as a distinct and important element of management went into eclipse. OMB essentially lost its capacity to enforce a coherent organizational philosophy upon the executive establishment. Insofar as traditional organizational doctrine played a role in management thinking after the abortive 1971 reorganization effort, it was a negative role. That is, smart executives were no longer those who achieved the agency's mission through adherence to central managerial rules and regulations, but those who were able to exempt their agencies from these rules and doctrine. 23/

22/ Nathan, Richard. The 'Administrative Presidency.' Public Interest. Summer 1976. p. 42. Also by the same author: The Plot That Failed: Nixon and the Administrative Presidency. New York, John Wiley, 1975; and The Administrative Presidency. New York, John Wiley, 1983.

23/ Musolf, Lloyd D. and Harold Serdman. The Blurred Boundaries of Public Administration. Public Administration Reviews. v. 40. March/April 1980: 124-130.

Sunset for Orthodoxy

The Carter Administration's attitude toward organizational policy and planning is something of an enigma. Carter came into office assailing the "horrible bureaucratic mess in Washington" and promised to clean it up. He believed that much of this so-called "mess" was rooted in an inadequate organizational structure. He proposed, therefore, to reorganize the executive branch in much the same manner as he had reorganized the Georgia State government during the years 1971-1972. 24/ He pledged, in his campaign, to eliminate useless agencies and consolidate agencies with overlapping functions. His stated objective was to trim the Federal Government down from some 1900 agencies to 200. 25/ There were no specific details forthcoming, however, on how this objective was to be accomplished or which agencies would be singled out for extinction. The President believed that proper organization was the key to proper management and his early remarks were steeped in "orthodox" phraseology.

Under the leadership of OMB Director Bert Lance, a massive "Reorganization Project" was undertaken with 300 persons (mostly detailees) at one point participating in a variety of projects. 26/ As it turned out, however, this massive effort eschewed the organizational doctrines that had guided the Brownlow, Hoover, and Ash reports. In Lance's words: "Reorganizing is more than box shuffling, its objectives will be to make the Government more efficient. Previous reorganizations have stressed moving agencies among Cabinet departments. Ours will take a bottom up approach, looking first at programs and peoples' needs and reworking structure and procedures to meet those needs." 27/

24/ Marshall, Eliot. The Efficiency Expert: Carter's Plan to Shake Up the Bureaucracy. New Republic. Aug. 21 and 28, 1976. p. 15-17.

25/ The origin and basis of Carter's estimate of 1900 agencies in the executive branch is shrouded in mystery. Havemann, Joel. Reorganization -How Clean Can Carter's Broom Sweep?" National Journal. Jan. 1, 1977. p. 6.

26/ Osbourne, John. White House Watch: Happenings. New Republic. December 17, 1977. p. 10.

27/ U.S. Executive Office of the President. President's Reorganization Project. Revised (mimeographed), April 1977. p. 3.

Although considerable activity can be traced to this Project, the results were marginal. 28/ Several minor Reorganization Plans are attributable to the Project. 29/ Otherwise the two departments created during the Carter Administration, Energy and Education, were both products of separate task forces rather than the unit within OMB presumably in charge of organizational issues. Preparation for the Civil Service Reform Act (CSRA) was done by a separate task force functioning, for the most part, outside OMB supervision. Throughout the three year life of the Project, it rejected the Presidential management model in its deliberations.

As late as 1979, Deputy Director John P. White of OMB made the following point in his confirmation hearings: "Reorganizations should proceed from problems which have been identified towards solutions rather than from preconceived notions of idealized structure." 30/ This statement tended to confirm the critics' view that the Project failed in large part because it functioned without an organizational theory or doctrine. 31/

28/ Peter Szanton, Associate Director of OMB responsible for the Carter Administration's reorganization studies assessed the rationale and results of the Project thus: "The past quarter-century has been marked by a deepening anomaly: American society has assigned to its federal government steadily increasing responsibility and has regarded that government with steadily declining confidence. It was this tension that led Jimmy Carter to campaign in 1976 largely on a platform of government reorganization and reform, and to treat reorganization as a high priority once in office. But the constraints on governmental performance are tight. The Carter reforms have been modest, their effects marginal." Federal Reorganization: What Have We Learned? Chatham House, Chatham, New Jersey, 1981. p. ix.

29/ U.S. Library of Congress. Congressional Research Service. The Carter Reorganization Effort: A Review and Assessment. CRS Report 80-172. Ronald C. Moe. September 1980.

30/ U.S. Congress. Senate. Committee on Governmental Affairs. Nomination of John P. White to be Deputy Director of the Office of Management and Budget. Hearings. 96th Cong., 1st sess. March 30, 1979. Washington, U.S. Govt. Print. Off., 1979. p. 28.

31/ In criticizing President Carter's Reorganization Plan for restructuring the EOP, Congressmen John Wydler, Thomas Kindness and Arlan Strangeland noted the absence of a "defensible administrative theory." "Aside from this highly dubious 'shell game' of showing more or fewer employees in any particular part of an organization chart, a reader will search in vain for any indication of a basic premise underlying the plan. This is one of its most serious shortcomings." U.S. House. Committee on Government Operations. Reorganization Plan No. 1 of 1977. Rept. No. 661. 95th Cong., 1st sess. Washington, U.S. Govt. Print. Off., 1977. p. 60.

The few studies continuing into 1979 were gradually brought under the operational purview of OMB. One of the interesting characteristics of the Project was its low visibility as an institutional unit and its gradual demise. There never was a formal announcement that it had ceased to function. Few of the studies, some of which were of high quality, were released to the public, and the record of its work risks becoming part of the 'fugitive' administration of the executive branch. 32/

The rejection by the Carter Administration of the orthodox view of organizational structure resulted in a near-fatal blow to comprehensive organizational planning within the OMB. Symbolic of the disillusionment by Carter was his decision to assign the development of synthetic fuels to a new "non-instrumentality" of the Federal Government, the Synthetic Fuels Corportation, rather than the recently created Department of Energy. 33/ The Carter Administration's disenchantment with the organizational elements of a managerial strategy was nearly complete.

Contemporary Presidents appear to have lost their faith in the efficacy of reorganization as a means to effect fundamental changes of direction in administration because, according to political scientist, Terry Moe, reorganization of structures does not solve the dilemma of "incongruence" between the expectations held of Presidents and the availability of resources to meet these expectations. All Presidents seek "congruence" between the expectations held of them by the public and the incentives and resources available to them to satisfy these expectations. Hence, the pull appears generally to be toward more politicization and centralization of the institutional Presidency. This process began during the Kennedy Presidency and continued unabated through the first Reagan term. In Terry Moe's words:

> The point to stress is that the Reagan years have seen a continuation and acceleration of the developmental logic apparent in the Kennedy, Johnson, and Nixon years. The problem from the beginning was that the traditional institutional framework was perceived by activist Presidents as inconsistent with their needs. While each had a unique personality and style, each had his own set of social goals, and each faced a somewhat different political environment, they all nonetheless responded in the same basic way: by attempting to direct the various dimensions of policymaking and political activity from the White House, by creating their own organizational units

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32/ The Carter Reorganization Effort: A Review and Assessment. CRS Report 80-172. p. 14.

33/ Moe, Ronald C. Government Corporations and the Erosion of Accountability: the Case of the Proposed Energy Security Corporation. Public Administration Review. v. 39. Nov/Dec. 1979: 566-571.

> and staffing them with their own people, and by politicizing established units in the bureaucracy and in the institutional presidency. Along the way there was much confusion and many missteps, and the flow of events was seriously disrupted by Watergate. But during the Reagan years the several threads seem to have come together nicely into a whole that, compared with arrangements under past administrations, is coherent, workable, and successful. In this sense, the Reagan presidency is a consummate expression of the historical drive toward congruence. [34]

The Reagan Administration Approach to Organizational Policy and Planning

The Reagan Administration came into office with a desire to change the direction of government toward a less interventionist role in the economy and social life of the Nation. The strategy to achieve this objective emphasized a three-pronged approach to management. The primary emphasis would be placed on selection and placement of "loyal" political executives in the departments and agencies. [35] The second element of the management approach was to monitor and control the agency regulation-writing process as a means to insure that the bureaucracy was moving in the "appropriate" direction. [36] Finally, priority would be given to financial control mechanisms and processes. 37/ People, regulations, and money were viewed as the prime ingredients for achieving fundamental change in the operations and policies of government.

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[34] Moe, Terry M. The Politicized Presidency. In Chubb, John E. and Paul E. Peterson, eds. The New Direction in American Politics. Washington, The Brookings Institution, 1985. p. 262-263.

[35] For a discussion of the role of "loyalty to the White House" in the political executive appointment process during the first Reagan term, consult: Pfiffner, James P. Nine Enemies and One Ingrate: Presidential Appointments During Transition. Paper delivered at the 1985 American Political Science Association Meeting. p. 21-24. Also: National Academy of Public Administration. America's Unelected Government. Cambridge, Massachusetts, Ballinger Press, 1983. Mackenzie, Calvin. The Politics of Presidential Appointments. New York, The Free Press, 1981.

[36] U.S. Office of Management and Budget. The Regulatory Program of the United States. Washington, U.S. Govt. Print. Off., 1985. Eads, George C. and Michael Fix, eds. The Reagan Regulatory Strategy: An Assessment. Washington, The Urban Institute, 1984. Olson, Erik D. The Quiet Shift of Power: Office of Management and Budget Supervision of Environmental Agency Rulemaking Under Executive Order 12291. Virginia Journal of Natural Resources Law. v. 4. Fall 1984. Litan, Robert E. Regulatory Policy in the Second Reagan Term. Brookings Review. v. 3. Spring 1985: 21-27.

For our purposes it is important to note that although the Reagan Administration was importuned to include organizational planning in its overall management strategy, 38/ it has chosen, apparently deliberately, to downgrade organizational issues. Insofar as the Administration is overtly concerned with organizational matters, it simply would like to see some departments and agencies abolished and several other assigned altered functions. There is also an emphasis by the Reagan Administration to promote the "privatization" of public agencies, 39/ and increased "contracting

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37/ See generally: President's Private Sector Survey on Cost Control. [Grace Commission] Report to the President. Washington, 1983. U.S. Office of Management and Budget. Management of the United States Government: Fiscal Year 1986. Washington, U.S. Govt. Print. Off., 1985.

38/ In 1981, the National Academy of Public Administration issued a report titled: Strengthing OMB's Role in Improving the Management of the Federal Government. This report was written to be read, hopefully, by executives of the incoming Reagan Administration. The report emphasized "nine general areas of management and organization." One such area was "Organizational Policy and Planning." The report contended that effective political management must include a coherent organizational doctrine and strategy. "In order to assure greater coherence in organizational policy and planning it will be necessry to develop guidelines to govern use of the wide range of instrumentalities available to the President in carrying out Executive Branch functions. Such guidelines would assist in determining when and how to assign fucntions to departments and agencies, and when it is desirable to establish one of the numerous varieties of commissions, councils, interagency committees, and public enterprises." Washington, National Academy of Public Administration, 1981. p. 5.

39/ Butler, Stuart. Privatizing Federal Spending. New York, Universe Books, 1985. By the same author, see: Privatization: A Strategy to Cut the Budget. Cato Journal. v. 5. Spring/Summer 1985: 325-335. Miller, James C. III. End the Postal Monopoly. Cato Journal. v. 5. Spring/Summer 1985: 149-156.

out" of a public functions to the private sector. 40/ Relatively little political capital has been expended in attempts to formally change existing structures.

With respect to cross-cutting managerial laws, the Reagan Administration has exhibited relatively little interest and has proposed few changes. The exception to this general attitude being in the area of money management where the Administration, buttressed by recommendations of the Grace Commission, has been particularly active. "Reform '88" has been the principal Administration initiative in the management arena. 41/

Proposal For a Separate "Office of Management"

In a 1983 report, the National Academy of Public Administration concluded that the management of the executive branch, and this included organizational policy and planning, was weak and getting weaker. The cause of this weakness, in their opinion, was systemic. It was related to the integration of budgetary and management responsibilities in one, presidentially-oriented agency.

Students of BoB and OMB have always recognized that its primary concern on behalf of the President has been the Federal budget process. This had been regarded as both a strength and a weakness in terms of OMB's management role. It is a strength because the budget gives the OMB Director a powerful voice in all government activities, with direct and continuing access to the President, and powerful leverage to deal with agency heads from a position of strength. It has always been hoped and expected that these strengths would be brought equally to bear on the managerial agenda; and from time to time, depending on the President's own interests and the Director's sensitivity to management problems, this has been true.

40/ In an apparent effort to deflect some of the criticism being directed at its vigorous implementation of OMB Circular A-76, "Performance of Commercial Activities," OMB now uses the phrase, "productivity enhancement" rather than "contracting-out." U.S. Office of Management and Budget. Enhancing Governmental Productivity Through Competition: Targeting for Annual Savings of One Billion Dollars by 1988. A Progress Report on OMB Circular A-76. Washington, U.S. Govt. Print. Off., 1984. Blumenthal, Barbara. Uncle Sam's Army of Invisible Employees. National Journal, May 5, 1979: 730-733.

41/ Cole, John R. Joe Wright on Reform '88. The Bureaucrat. v. 12. Summer 1983: 7-11. Reform '88 'This is Why We Came to Washington.' Government Executive. April 1984: 30-32. Kirschten, Dick. OMB's Wright Plots 'Quiet Revolution' in the Way U.S. Agencies Do Business. National Journal. October 30, 1982: 1846-1847.

The disabling systemic weakness, however, has been that the budget and related national economic issues have usually proved to be all consuming. In recent years it has become so intense that it has almost totally preoccupied critical OMB leadership, draining away time, interest, and staff from managerial initiatives. 42/

The view that "management" responsibilities ought to be organizationally separate from "budget" responsibilitites represents a shift in opinion by much of the public administration community. There had long been something of a consensus that management issues ought to be "piggy-backed" on the budgetary process so that the former might be endowed with the clout inherent in the budget. In the view of some, however, the result has been that budget priorities simply overwhelm management priorities. Management has become largely ad hoc, short-term responses to immediate political problems. The management "initiatives" have been geared principally toward those activities which promise a quick political pay-off or have the potential for a salutary impact on budgetary "spending."

The principal argument for creating a separate Office of Federal Management is that the various elements of a presidentially-oriented managerial strategy cannot be developed or implemented under current OMB structure and philosophy. Experience has shown, according to OFM supporters, that the demands of budgetary deadlines and priorities will inevitably take precedence over management needs and concerns. Management will tend to be driven by financial priorities alone. If the subject of organizational policy and planning is to receive the attention it deserves and requires, and if the institutional interests of the Presidency are to be served, personnel need to be trained and given some structural stability. This can only occur if the function is located in a management agency whose primary, not secondary, responsibility is executive branch management.

Critics of the proposal for a separate Office of Federal Management, although their views have not as yet appeared in print, generally argue that while a separate OFM may assign more importance to and resources for organizational policy and planning, it will be for naught as the Office itself is likely to be politically weak. Management apart from the budgetary process, in their opinion, is an exercise in sterility and futility.

42/ National Academy of Public Administration. Revitalizing Federal Management. p. 11.

A Presidential Stake in Organizational Planning?

Do Presidents have a stake in how the government is organized? Does organization make any difference? If one begins with the assumption that all Federal agencies and personnel should be accountable to the President or his delegates, and through them to Congress, then a fundamental premise has been established by which to judge the utility of organizational options. Clearly, given this assumption, some organizational arrangements are more likely than others to enhance the political and institutional interests of the President. But how does a President determine which organizational structures are "better" than others?

Initially, in the first Congress, President Washington and Congress agreed that virtually all functions of the new government would be placed in the "three great departments." 43/ While such a decision might appear, at first glance, to be rather simplistic and obvious, it actually represented a break from European experience. Unlike England and France with their residual feudal offices and customs, the new American Republic was attempting to create a national structure with reasonably clear lines of authority and responsibility. With respect to the organization of the executive branch, the unity of structure lasted for approximately a century with nearly all of the new governmental functions being assigned to an agency within a department.

With the establishment of the Interstate Commerce Commission in 1887, however, the institutional story of the executive branch has shifted from one of organizational unity to one of organizational and functional dispersion. 44/ New categories of agencies, e.g., independent regulatory commissions, 45/ have come into being over the decades. Lines of accountability, once relatively clear, have become in some instances rather obscure. In other cases, public functions have been assigned to units only tangentially connected

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43/ Discussion of the Acts creating the "three great departments" may be found in: Hart, James. The American Presidency in Action, 1789: A Study in Constitutional History. New York, Macmillan Company, 1948. Chapter 7.

44/ Senate Committee on Governmental Affairs. The Federal Executive Establishment: Evolution and Trends. p. 34.

45/ Wallace, Schuyler C. Federal Departmentalization: A Critique of Theories of Organization. New York, Columbia University Press, 1941. p. 3. Cushman, Robert E. The Independent Regulatory Commissions. New York, Oxford University Press, 1941. Seidman, Harold. A Typology of Government. In Szanton. Federal Reorganization: What We Have Learned? p. 33-37.

with the executive branch, e.g., Legal Services Corporation. Increasingly, public functions are being performed by instrumentalities at the "margins of government." 46/

The thrust of the orthodox theory of public administration was to promote a hierarchical organizational basis for the executive branch so that most, if not all, Federal officers would have direct, or indirect, accountability to the President. The Brownlow, Hoover, and Ash reports were predicated on the notion that the President should be the general manager of the government in fact as well as name. During this same period, however, the orthodox theory of organization came under ridicule and was widely discredited. The problem was, interestingly, that while the orthodox theory had certain intellectual and political deficiencies, no better comprehensive theory of organization emerged to replace the fading orthodoxy. Harold Seidman observed:

> Flawed and imperfect as they may be, the orthodox 'principles' remain the only simple, readily understood, and comprehensive set of guidelines available to the president and the Congress for resolving problems of executive branch structure. . . . They have the virtue of clarity, a virtue often scorned by the new orthodoxies, especially the behavioralists and social psychologists, who tend to write for each other in an arcane language which is unintelligable to the lay public. 47/

Presidents have a stake in how the executive branch is organized, whether they publicly acknowledge it or not. Organization tends to determine the formal, as well as informal, relationships among agencies and between the agencies and the Presidential supervisory units. How an agency is organized will partially determine what interest groups will enjoy access and influence. In short, organizational arrangements are not neutral. They are one of the essential ingredients of political power. Presidents should rationally seek an organizational strategy appropriate for the achievement of their political and institutional goals.

46/ Musolf, Lloyd D. and Harold Seidman. The Blurred Boundaries of Public Administration. Public Administration Review. v. 40. March/April 1980: 124-130. U.S. Library of Congress. Congressional Research Service. Administering Functions at the Margin of Government: The Case of Federal Corporations. CRS Rept. 83-236. [Ronald C. Moe] Washington, December 1983.

47/ Seidman. Politics, Position, and Power. p. 9.

Conclusion

Most Presidents, if not all, seek to achieve certain objectives during their tenure. Since Presidents can issue a limited number of orders, and since those few orders are rarely self-executing, it is necessary for Presidents to employ certain institutional resources and managerial skills if they are to make progress towards their objectives.

At least since the Administration of Theodore Roosevelt, most Presidents have placed considerable reliance on organizational design as a means for effecting substantial policy and political change. Reliance on executive branch reorganization as a major technique for change was generally reinforced by successive national study commission reports. In recent years, however, formal structural reorganization has lost much of its attraction for Presidents. Indeed, the decline in Presidential interest has reached the point that today there is no discernible unit remaining in OMB responsible for promoting the "President's interests" in organizational matters.

One consequence of the shift in Presidential managerial focus away from structure and more toward procedural and financial controls has been some loss of centralized organizational policy and planning capacity within the executive branch. When a proposal for a new or revised program is made, for instance, the suggested administrative structure to implement this program is likely to be forthcoming from the agency most directly impacted with heavy interest group and Congressional involvement. The result appears to be an increasingly fragmented organizational structure for the executive branch characterized by complex administrative relationships, weakened central managerial supervision, and a continuing trend toward breaching the traditional separation of the public and private sectors.

Organizational policy and planning is not a field with high political returns for a President. President Reagan has demonstrated that one can make fundamental changes in the direction of the bureaucracy without following a comprehensive or consistent organizational strategy. On the other hand, it is difficult to see how the institutional Presidency can retain its managerial capacity over the long-run if it does not periodically rebuild a coherent, understood, and enforceable organizational doctrine. Unless the decisions concerning the structure of the executive branch are to continue to shift toward Congress and the agencies themselves, some office in the executive branch with the mission and resources to protect Presidential institutional interests seems to be needed. If this assessment of the current situation is accurate, the most likely location for such a unit is within the present OMB or in the proposed Office of Federal Management.

Irrespective of what the President or the Director of OMB determine to be the primary thrust of their overall managerial strategy, organizational issues will continue to arise and impact the ability of the President to achieve his political and administrative objectives. The only question remaining is whether organizational policy and planning shall be guided by doctrine centrally administered by a unit with a Presidential perspective or whether organizational issues shall continue to be largely resolved by the actors most directly impacted and by Congress.

CENTRAL LEGISLATIVE CLEARANCE

Ronald C. Moe*

Central legislative clearance is generally regarded as one of the most powerful and effective tools for Presidential management of the executive branch. The central legislative clearance process operates under the direction of the Legislative Reference Division (LRD) in the Office of Management and Budget (OMB) and is designed to provide review, coordination, and approval for the literally hundreds of legislative proposals that emanate annually from executive agencies to Congress. The Division also reviews agency reports and testimony on pending legislation as well as informing Congressional Committees on the relationship of legislation under consideration to the President's program. The Division prepares memoranda to the President on enrolled bills prior to the latter's decision to sign or veto legislation. The procedures to be followed in these clearance processes are outlined in OMB Circular A-19 (discussed below, pp. 21-23).

DEVELOPMENTAL PERIOD

With the passage of the Budget and Accounting Act of 1921, executive agencies lost their traditional freedom to make appropriation requests directly to Congress. The President, under the Act, was made responsible for integrating these separate budget estimates into a single, executive budget. Through the 1920s, the principal activity of the Bureau of the Budget (BoB) [as the Office of Management and Budget was known until 1970] was to collect, integrate, and reduce the agencies' budget requests prior to Presidential submittance to Congress. 1/ Financial clearance was the mission of this small agency then located in the Department of the Treasury.

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1/ Dawes, Charles G. The First Year of the Budget of the United States. New York, Harper and Bros., 1923. Marx, Fritz Morstein. The Bureau of the Budget: Its Evolution and Present Role. American Political Science Review. v. 39. Aug. and Oct. 1945: 653-684, 869-898.

President Franklin Roosevelt viewed the mission of the Budget Bureau more broadly than did his predecessors. In January 1937, the President forwarded the recommendations of the President's Committee on Administrative Management (Brownlow Committee) to Congress. 2/ He asked Congress at that time for Reorganization Plan authority, an authority granted by Congress in 1939. Reorganization Plan No. 1 of 1939 established a new Executive Office of the President (EOP) and transferred the Budget Bureau from Treasury to this new office. Thus, a revitalized Bureau of the Budget became the central unit of the institutionalized Presidency. The functions of the Budget Bureau were spelled out in E.O. 8248. 3/

The first Director of the Budget Bureau within the EOP was Harold Smith and he established five divisions with the chiefs reporting to him. All division chiefs were careerists. Their charge was to provide a government-wide perspective on issues and protect the institutional Presidency. The centralized clearance process, previously geared simply to keep expenditures down, was expanded to include review and approval of all executive branch requests for legislation, regardless of whether or not expenditures were involved. In 1945, the Legislative Reference Division was created to handle both the legislative clearance and enrolled bill processes. Never large, this office has been maintained through the years although its institutional and political importance has diminished since the late 1960s.

Before describing certain institutional and procedural changes that have occurred over the years, it is worth noting some constants.

The bulk of legislation, then and now, consists of minor amendments to existing law. For the most part, such proposals, which cumulatively are significant, are initiated by the agencies. Agency-initiated legislation must be cleared at several levels; first within the agency, then by the department, and finally by the OMB. At the OMB level, interagency consultation, negotiation and clearance is frequently necessary. The objective is to have an Administration "position" rather than have Congress be faced with multiple views coming from individual agencies.

If, after the clearance process, OMB approves of an agency proposal, it will note on the agency bill that it is "in accord with the program of the President." A lesser brand of approval simply elicits a "no objection." This rather passive approach may give way to a more aggressive effort to bring agencies to one mind on a piece of legislation. Persuasion is the primary tactic to get agencies to

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2/ U.S. President's Committee on Administrative Management. Report of the Committee with Studies of Administrative Management in the Federal Government. Washington, U.S. Govt. Print. Off., 1937.

3/ U.S. President. Executive Order 8248. Organization of the Executive Office of the President. Federal Register. Sept. 12, 1939. p. 3864.

agree. The OMB may, of course, decide to block the proposal. The blockage may be permanent or it may be temporary until an agreement can be reached.

Agencies, although they are prohibited from submitting bills deemed to be in conflict with the President's program, have found methods to "end-run" the OMB. They may informally talk with sympathetic Congressional committees or individual members. Short-term gains to an agency from an end-run tactic, however, may be more than off-set by long-term costs incurred upon an agency by an antagonistic OMB.

At the same time the Budget Bureau was assigned legislative clearance responsibilities, it also acquired a second clearance function. The Bureau was given control over agency communications to the President regarding enrolled bills. The Bureau became the key actor on the question of whether the President should sign or veto a bill passed by Congress. Legislative clearance had in a short time become a formidable tool for the President both in managing the executive branch and in his relations with Congress.

The degree to which OMB is able to dominate the legislative clearance process has varied over time. It is partly a function of Presidential attitudes and priorities and partly a function of institutional factors within OMB itself. The role of OMB in the legislative clearance process is not static and hence some historical perspective is required to understand where OMB stands today and how it arrived at this position.

YEARS OF CHANGE

Throughout the Roosevelt years, the staff of the White House remained small. With the emphasis on war administration, the White House came to rely more and more on the Bureau staff for developing Administration "positions" on domestic issues. This reliance continued into the Administration of Harry Truman with the Bureau drafting much key legislation and negotiating with Congress.

Critical to this close working relationship between the White House and the Bureau, according to Larry Berman, was the leadership of Budget Director, James E. Webb and the emergence of an enlarged role for the Office of Legislative Reference. "The most important institutional change of the period was in the Budget Bureau's traditional legislative clearance role." 4/ Prior to 1948, the legislative clearance process had been passive, if not negative. Webb, however, saw this office as a critical unit, because of it historical memory and government-wide perspective, for promoting the

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4/ Berman, Larry. The Office of Management and Budget and the Presidency, 1921-1979. Princeton, Princeton University Press, 1979. p. 40.

President's interests. "By establishing the Bureau's Office of Legislative Reference as an extension of the White House, Webb proved that an institutional watchdog was needed." 5/

The Republicans returned to power in 1953 after a hiatus of 20 years. Following a shaky start, President Dwight Eisenhower and his staff came to respect and rely upon the Budget Bureau for "dispassionate" advice much the way Presidents Roosevelt and Truman had. They soon understood that the legislative clearance process was central to the success of any sustained effort by the President to develop an "administrative position" on complex issues involving a number of agencies. 6/ A careerist himself, Eisenhower was amenable to the idea that careerists could be relied upon to promote and protect the institutional Presidency.

The thrust of the Legislative Reference's efforts was to insure that the President's program was implemented, not to determine what the program would be. If there was a major quarrel between the Bureau and the agency, the President's Special Counsel would act as referee.

> The division's advice was usually final. While departments and agencies could appeal to the White House, this practice was not encouraged and was rarely successful. [Budget Director Roger] Jones had the ear of the president. Besides, both Truman and Eisenhower wanted the clearance process to work. The number of end-runs to Congress, attempts to short-circuit the BOB's decision by encouraging a congressional appeal, were also surprisingly few and did not become a major problem for either administration. 7/

The period between 1945 and 1960 has often been characterized, with some justification, as the "golden age" of the Budget Bureau.

Beginning with the Kennedy Administration in 1961, an erosion occurred in the Budget Bureau's pre-eminent position in the legislative clearance process. White House staff began to inject themselves in the clearance process on a regular basis. Distrust of the ability and the loyality of the "bureaucracy" probably lay at the

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5/ Ibid.

6/ Richard E. Neustadt. Presidency and Legislation: The Growth of Central Clearance. American Political Science Review. v. 48. Sept. 1954: 641-671; and v. 49. Dec. 1955: 980-1021. Frederick Mosher suggests that President Eisenhower came to rely as much, and possibly more, on the careerists than even Harry Truman. A Tale of Two Agencies: A Comparative Analysis of the General Accounting Office and the Office of Management and Budget. Baton Rouge, Louisiana State University Press, 1984. p. 120.

7/ Wayne, Stephen J. The Legislative Presidency. New York, Harper and Row, 1978. p. 73.

root of this shift of power away from the Bureau toward the White House. "For Presidents Kennedy and Johnson who," according to Robert Gilmour, "wished to achieve a high level of legislative accomplishment, reliance on traditional initiatory and clearance procedures was understood to be inadequate. Neither President found that the bureaucracy could supply the ideas and advice needed for a major legislative program." 8/

Under Lyndon Johnson, the White House staff openly coopted responsibility for developing and coordinating the President's legislative program. Joseph Califano, a Presidential Assistant, was the leader in the move to shift powers to the White House staff. But the White House not only wanted to diminish the leverage of the Budget Bureau, it wanted to weaken the agencies as well. According to Harold Seidman:

> [T]he task force was invented as a device for undercutting the power of the agencies and the bureaucracy in the legislative development process. . . . Task forceitis ran rampant. At least forty-five task forces were organized in the fall of 1966. Papers were circulated on an "eyes only" basis and when agency people were included on the task forces they were reluctant to tell even their bosses about what they were doing. The task force operation bred a miasma of suspicion and distrust without producing very much that was useable. 9/

The Bureau, by 1968, was caught between conflicting demands and roles. The Bureau no longer served as an efficient budget cutter nor was it an effective program planner. 10/ It seemed to have lost its sense of purpose and identity.

One of the Johnson task forces, 11/ chaired by Ben Heineman, was generally critical of the management, organization, and administrative practices of the Great Society. Included in its general indictment was specific criticism of the Budget Bureau and what it considered to

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8/ Gilmour, Robert S. Central Legislative Clearance: A Revised Perspective. Public Administration Review. v. 31, March/April 1971. p. 156.

9/ Seidman, Harold. Politics, Position, and Power. 3d ed. New York, Oxford University Press, 1980. p. 90-91.

10/ Schick, Allen. The Budget Bureau That Was: Thoughts on the Rise, Decline, and Future of a Presidential Agency. Law and Contemporary Problems. v. 35. Summer 1970. p. 524.

11/ The Heineman Task Force, formally known as the President's Task Force on Government Organization, never officially published its report. In 1976, the Lyndon Baines Johnson Library made public the final report of this task force.

be an overly formalized legislative clearance process. The task force recommended major changes. Although nothing resulted from this study during the remainder of the Johnson Administration, incoming President Richard Nixon was favorably impressed with the report and and in 1970 got Congress, after considerable effort, to approve Reorganization Plan No. 2 which changed the Bureau of the Budget to the Office of Management and Budget. 12/ The Reorganization Plan created a Domestic Council with a substantial and subject-specialized staff in the White House and opened the way for a fundamental shift in the organization and philosophy of the new OMB.

POLITICIZATION OF OMB

How can tne OMB best serve the President? This question has prompted two decades of debate among practitioners and political scientists alike. One side argues that what the President needs is an agency with a continuing interest in the institutional Presidency, irrespective of incumbent, staffed by professionals with "neutral competence." The other side contends that an effective President needs to have staff units, particularly OMB, managed by politically-oriented, competent appointees committed to the President's programs and principles.

What is meant by the term "neutral competence?" Hugh Heclo has attempted a definition:

> In the Anglo-American democracies, neutral competence is a relatively recent growth and corresponds roughly with the appearance of the higher civil service about a century ago. It envisions a continuous uncommitted facility at the disposal of, and for the support of, political leadership. It is not a prescription for sainthood. Neutrality does not mean the possession of a direct-dial line to some overarching, nonpartisan sense of the public interest. Rather it consists of giving one's cooperation and best independent judgment of the issues to partisan bosses--and of being sufficiently uncommitted to do so for a succession of partisan leaders. 13/

Against this position, which held sway in the BoB/OMB through the mid-1960s, is the opposite, which holds that American Presidents are first and foremost political leaders elected to implement a political philosophy and program. They deserve and need staff offices led by

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12/ Reorganization Plan No. 2 of 1970. Statutes at Large. v. 84. p. 2085. July 1, 1970. Carey, William D. Reorganization Plan No. 2. Public Administration Review. v. 30. Nov.-Dec. 1970: 631-634.

13/ Heclo, Hugh. OMB and the Presidency--the Problem of 'Neutral Competence.' Public Interest. Winter 1975. p. 81

individuals who share the President's commitments. Neutral competence, in the eyes of critics, is viewed as a cover for thwarting legitimate political change.

Prior to 1970, there were some five officers in the BoB whose appointments were subject to some "political considerations." After the 1970 reorganization, four program associate directors (PADs) were added to this list. The latter exercise continuing operating responsibility for specific subject-fields and have substantial numbers of personnel, including budget examiners, reporting to them. Agencies now must argue their budget requests to political appointees. In 1977, two additional political positions, Executive Associate Directors, were created. These positions, collectively, constitute a new level of political control in the agency.

While the literature appears pretty much in agreement that OMB has been "politicized," at least more so than during the pre-1965 period, it is not clear what consequences have followed from this presumed change. 14/

One recent study of career civil servants in the OMB, principally program division budget examiners and their branch chiefs, determined that "the first two and a half years of the Reagan administration have witnessed an unprecedented expansion of the careerists' monitorship roles and the consumption of time spent tracking legislation and cultivating congressional contacts." 15/ The study continued:

> [W]hile careerists were encouraged to get more involved with Congress in an informational capacity, they have not been forced into 'negotiation' or 'policy negotiation' roles. Guidelines, while encouraging congressional information gathering, contained the clear proviso that career civil servants were not to represent administration policy or get involved in political negotiations. 16/

The study noted above reflected the opinions of the "budget" side of OMB and did not indicate any general dissatisfaction with this "political" emphasis now in evidence in the agency. For most career

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14/ The literature describing the "politicalization" of OMB is extensive and includes the works by Berman, Mosher, Wayne, Heclo and Seidman cited in this report. In addition, please consult: Moe, Terry M. The Politicized Presidency. In The New Direction in American Politics. Editors: John E. Chubb and Paul E. Peterson. Washington, The Brookings Institution, 1985: 235-271.

15/ Tomkin, Shelley Lynne. Playing Politics in OMB: Civil Servants Join the Game. Presidential Studies Quarterly. v. 15. Winter 1985. p. 167.

16/ Ibid.

budgeteers, the increase in political contacts and analysis required of them was understandable and acceptable given the increased importance of the Congressional budget process.

Other elements of OMB, however, have been more adversely impacted by the increasingly political nature of the agency. One element of OMB affected adversely was the Legislative Reference Division (LRD), now functioning as a staff office. The LRD, once headed by a succession of powerful civil servants, has undergone successive downgrading in institutional terms. This downgrading has resulted in increasing isolation from major decision arenas. In addition, some argue that there has been a general weakening of the central clearance process for which this Division retains primary responsibility, at least in formal terms.

From 1965 on, with the exception of the Watergate period when OMB filled the vacuum left by the inaction of the White House staff, 17/ central legislative clearance has followed a two-track path. If the White House had an interest in the proposal, it was cleared by Presidential aides. Under Johnson, "departments and agencies took to clearing congressional testimony directly with the President." 18/ If the White House perceived it had no direct interest in the legislation, then it was left to OMB. "As a consequence, the civil servants in the LRD were left with the more routine matters. They also became distanced from critical points of decision." 19/ With distance came passivity and with passivity came institutional decline. There is no evidence to suggest that BoB/OMB Directors resisted this gradual shift of clearance initiative from their agency to White House environs.

In general, management issues, such as procurement, personnel, and organizational policies, once a major concern of BoB/OMB, are now of relatively little interest. In 1983, the National Academy of Public Administration published a study on government management and offered the following conclusion: "In its earlier years, agencies came to rely on BoB/OMB as a key source of governmentwide initiatives for keeping Federal management modern and up to date. In recent years, however, even while OMB continues to be capable of occasional excellent performance, it has irretrievably lost its overall effectiveness as

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17/ Havemann, Joel. OMB's Legislative Role is Growing More Powerful and More Political. National Journal. v. 5. Oct. 27, 1973: 1589-1598. Stafford, Samuel. 'Political' OMB Cuts Agencies to Size. Government Executive. Aug. 1974: 20-24.

18/ Wayne. The Legislative Presidency. p. 82.

19/ Ibid.

government-wide leader in management matters." 20/ This generalized shift in OMB priorities away from management and toward the budget has been reflected as well in the changing role and influence of LRD.

> No longer does the Office of Legislative Reference deal directly with the White House staff or the departments; now it usually deals through the PADs. Having less information to trade, Legislative Reference gets called to fewer meetings and has more trouble getting in on things. In effect, the institutional role and government-wide perspective in legislative clearance has been ceded to the PADs and their particularly policy bailiwicks. 21/

The above description by Hugh Heclo in 1975 appears essentially valid for 1985 as well. The two LRD chiefs since 1975 have viewed their responsibilities as ministerial in character. If the issue is strictly administrative, minor, or non-controversial, the LRD with its career staff is still the central actor in the legislative clearance process. But if the issue is politically important or controversial, the clearance process rests with politically appointed officers in OMB or White House staff or both. 22/ In such an instance, the contact of LRD staff is with the White House staff person in charge, and often this contact is through a Program Associate Director.

ENROLLED BILL PROCESS

The legislative clearance process consists not only of reviewing and clearing legislative proposals emanating from the agencies, but also of circulating enrolled bills to the appropriate agencies for their comments and recommendations prior to the President's decision to sign or veto the bill.

The pertinent provision of Article I, Section 7 of the Constitution relating to the presentation of bills to the President reads: "Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States." Upon presentation, the President has ten days, excepting Sundays, in which to sign or veto the bill. If he fails to sign the bill within the 10 day period, it becomes law without his signature.

20/ National Academy of Public Administration. Revitalizing Federal Management: Managers and Their Overburdened Systems. Washington, National Academy of Public Administration, 1983. p. 11.

21/ Heclo. OMB and the Presidency. p. 86.

22/ Mosher. A Tale of Two Agencies. p. 121.

Once the presiding officers of both Houses of Congress sign the enrolled bill, the parchment original is conveyed by special messenger to the White House where notice of receipt is stamped and the ten day period for consideration commences. 23/

In practice, the formal process described above is supplemented by a less formal process for Presidential and agency review of enrolled bills.

> Even before the parchment version arrives at the White House, the Government Printing Office sends a number of facsimiles of the legislation to the Office of Management and Budget. These go to OMB's Legislative Reference Division which in turn distributes the bills to those executive departments and agencies that have an interest in the subject matter and whose recommendations will assist the President and his advisors in reaching a decision. 24/

The process of advising the President as to whether or not he should veto a given bill is an important process involving many institutional actors. LRD refers copies of the facsimile bills to those departments and agencies with responsibility for the subject-fields covered in the bill for their comments. Copies are also provided the pertinent budget examiners for their opinions. Generally, the recipients are given 2 days in which to reply. If they recommend a veto, it is expected that they will submit a draft veto message as well. The LRD takes these memorandums and prepares a file for the President. OMB is expected itself to make a recommendation to the President as to whether he should sign or veto.

The OMB memorandum is forwarded to the White House no later than the fifth day of the ten day consideration period. How many staff in the White House receive copies of the enrolled bill folders depends on the subject of the bill. It is true, however, that the role of the White House staff in the enrolled bill process has expanded greatly since 1965. Wayne, Cole and Hyde report:

> This increased White House scrutiny seemed to have two major effects: a greater amount of information and politically based points of view at the president's disposal; and a shift of key presidential advisement closer to the Oval Office. White House advisers presumably were more influential by virtue of the way the process was structured and sequenced.

23/ If the President signs the parchment original of the enrolled bill, it is sent to the National Archives where it becomes part of the "laws of the United States."

24/ Wayne, Stephen J. and James F.C. Hyde. Presidential Decision-Making: The Politics of the Enrolled Bill Process. Paper delivered at the 1975 Annual Meeting of the American Political Science Association. p. 4.

> Their recommendations were made last but appeared first in the file the president received. Since all recommendations were confidential, the departments and agencies did not know what White House Advisors or OMB, for that matter, had recommended. Under these circumstances and within the time period, appeals were difficult. The White House cover memo which summarized the OMB summary and included White House opinion was the one the President was likely to read most thoroughly and most of the time. It was shorter and its format was tailored to his wishes. 25/

OMB's recommendation to the President is supposed to reflect the President's institutional interests in the legislation. They may recommend a veto while the "lead agency" recommends approval. This difference of opinion is the result, often, of OMB's seeing what it considers to be a "bad precedent" or a management weakness in the bill while the lead agency is typically concerned more with the policy implications of the bill.

While LRD is responsible for distributing and coordinating memorandums on enrolled bills, it is the larger OMB organization that plays the critical advisory role in the process. "From the President's point of view, the inputs are not equal. OMB has consistently enjoyed greater influence than any other executive agency." 26/

When the OMB recommendation conflicts with the lead agency recommendation, the President is forced to make a decision. During the Nixon-Ford administrations, "an OMB recommendation to approve generally signaled the absence of major problems. With OMB support, the odds became heavily weighted in favor of presidential approval, regardless of what others recommended. OMB's advice to veto, on the other hand, did not have as predictable a presidential response. The reason probably is the presumption in favor of most enrolled bills." 27/

The decision to sign or veto a bill remains solely a Presidential prerogative. It cannot be delegated away. The most the enrolled bill process can do is to provide the President with the best information and advice obtainable from executive branch sources. The President

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25/ Wayne, Stephen J., Richard L. Cole and James F.C. Hyde, Jr. Advising the President on Enrolled Legislation: Patterns of Executive Influence. Political Science Quarterly. v. 94. Summer 1979. p. 306.

26/ Ibid. p. 314.

27/ Ibid.

may, however, ignore this advice. 28/ The role of LRD in this process, once crucial in policy and management terms, has diminished to the point of being a passive coordinator of the views of others. The enrolled bill process, essentially a post-War phenomenon, remains today an important element in any President's overall institutional strategy in confronting a resurgent Congress.

LEGISLATIVE REFERENCE DIVISION TODAY

In 1982, the line of accountability for the chief of the Legislative Reference Division (LRD) was shifted from the Deputy Director of the agency to the Executive Associate Director for Budget and Legislation (EAD). This new "layer" of authority over the LRD now means that the LRD is one of three staff offices reporting to this EAD who, in turn, reports to the Deputy Director. The EADs are political appointments. In the eight years these positions have existed, the tenure of appointees has been short.

The current chief of the LRD, James Frey, is a career executive with over 30 years Federal experience who indicated in an interview, 29/ that the 1982 reorganization had not resulted in any noticeable change in the operations of his division. There had been no attempt by the EAD, as yet, to oversee the office on a daily basis. According to Frey, the EAD "is too busy with the budget to pay us much attention." Hence, Frey does not consider this so-called "layering" to be a problems to him as a career administrator.

As of January 1986, the LRD had 28 Full Time Equivalent (FTE) positions, a figure that includes 7 secretaries and 5 recording clerks. The 16 substantive positions include the division chief and three branch chiefs. The legislative assignments for analysts are to one of three branches. There is the (1) Economics-Science-General Government Branch; (2) Labor-Welfare-Personnel Branch; and (3) Resources-Defense-International Branch. Within each branch, the legislative assignments to analysts are about evenly split between agencies and subject-fields. These three branches roughly parallel the Program Divisions. Indeed, the branch chiefs have as their primary level of contact the several Program Associate Directors (PADs) of OMB.

28/ An interesting instance of the President deciding to veto a measure in which there had been unanimous recommendations for him to sign involved President Gerald Ford. A bill had passed Congress to name a post office in Michigan after Mr. Ford. The President, against the recommendations of OMB, the agencies and his staff, vetoed the bill. U.S. Congress. Office of the Secretary of the Senate. Presidential Vetoes, 1789-1976. Washington, U.S. Govt. Print. Off., 1978. p. 454-455.

29/ Interview with James Frey, Director of the Legislative Reference Division, January 2, 1986.

The legislative analysts generally have master's or law degrees and remain for a number of years. For the most part, they consider themselves to be specialists, not generalists, and do not entertain expectations of influencing policy. If an analyst stands out, their next career position tends to be an appointment as a budget examiner. The notion that the budget is pre-eminent over management priorities is acknowledged and accepted.

Today, bills for review and/or clearance come from four sources. First, there is budget support legislation. The budgetary process requires that legislation be drafted to implement budgetary requirements written in law. Second, bills emerge from the several Cabinet Councils generally reflecting agreements between agencies on cross-cutting issues. Third, bills are referred directly to LRD from the agencies. For the most part such bill drafts are concerned with routine matters although it is one of the responsibilities of the LRD to "spot" drafts that might have political implications and to bring them to the attention of the appropriate individual in OMB or in the White House. Finally , draft bills are received from congressional committees for expert review and commentary from the perspective of the President's program.

Once a draft, irrespective of source, is determined to have "policy implications," how does LRD determine who in the White House should be alerted? The response from Frey was "plain experience." The LRD chief or the individual analyst is the critical decider. For example, if a bill involves some aspect of "government ethics," then experience indicates that the White House Counsel should be alerted. Right now, the Office of Policy Development (OPD) is relatively small so there are fewer referrals to this unit than has been the case in recent years. Frey used the terms "traffic cop" and "identifier" in referring to the role of the LRD in the draft referral stage of the legislative process.

In response to the query: "Do persons in the White House ask your advice on issues involving administrative management or institutions?", Frey stated: "We ask them for advice, not them us."

The turn-around time for comments on drafts referred to agencies or White House units varies from the ideal 30 day turn-around to hurry-up, one day turn-arounds. Not surprisingly, some departments have difficulty meeting short turn-around deadlines. Short deadlines are associated with budget support legislation. The LRD does very little bill drafting on its own authority confining itself chiefly to providing legislative "re-phrasing."

The responsibilities of the Division are outlined in the Budget Justification each year. These responsibilities result in the following workload statistics:

	96th Congress	97th Congress	98th Congress
Congressional request for OMB views	3,154	3,256	2,549
Agency reports and testimony for hearings	6,738	4,563	4,453
Agency draft bills	983	932	780
Enrolled bills	746	542	699
TOTAL	11,621	9,293	8,481

These figures, taken by themselves, suggest a diminishing workload. Such an assessment, however, may be misleading. The data with respect to "agency reports and testimony for clearance," for example, follow failrly closely the decrease in the number of bills being introduced and passed by Congress. Fewer bills under consideration results in less need to clear testimony. While this may appear to be the case, the workload may actually be greater today than in prior years because the practice is now to have fewer bills but for these bills to be more complex. The annual authorization process, once scattered in a number of bills, is now pretty much integrated into a Reconciliation Bill. The impact of Gramm-Rudman-Hollings procedures on the authorization and appropriation processes may tend to further decrease the number of bills to be considered while actually increasing the workload for the Division in terms of coordinating agency responses and the development of "Administration positions."

CONCLUDING COMMENTS

The legislative clearance process, in both the pre-enactment and enrolled bill phases, remains a major tool supporting Presidential efforts to manage the executive branch. Having said this, a historical review of the process and the Legislative Reference Division, the OMB office responsible for implementing the process on the President's behalf, suggests a gradual erosion in the scope and influence of the clearance process over time. The LRD, no longer the haven for generalists led by a career executive aggressively pursuing the presumed institutional interests of the Presidency, is now comfortable with a less visible, less controversial staff role.

It does not appear that the LRD views itself as a primary actor in promoting and enforcing the managerial priorities of OMB. Management is considered to be someone else's job. The LRD is now a staff unit run by a career executive, thereby making it one of the last bastions of "neutral competence" even remotely near the President. The legislative analysts are staff specialists and do not consider themselves particularly responsible for providing a government-wide perspective to the clearance process. This perspective might be provided by politically sensitive, top White House aides. The clearance functions today are ministerial in character and there is little sentiment evident within LRD to alter this role.

Criticism of LRD is usually included within broader criticisms of OMB's attitude toward executive branch management generally. Present management, critics assert, is almost solely occupied with monetary matters at the expense of other equally important management issues. The protection of the institutional interests of the President is in their view, an integral part of "good management." Such interests include the development and maintenance of generic management laws and principles. To critics, it is the proper role for the LRD to aggressively review bills and legislation to insure that these management laws and principles are not evaded or contradicted. In their opinion the President, and the Congress, would be better served by an LRD that is more aggressive in its philosophy and actions.

The central legislative clearance processes are critical instruments for coherent management of the vast executive establishment. The question to be raised, and hopefully addressed, is whether or not this authority is being used in the most efficacious manner to insure that the managerial responsibilities of the President are being met.

CURRENT CLEARANCE PROCEDURES: OMB CIRCULAR A-19

The current procedures for the coordination and clearance by OMB of agency recommendations on proposed, pending, and enrolled legislation are contained in OMB Circular A-19, revised, September 20, 1979.

The provisions of this Circular cover all executive branch agencies except those that are specifically required by law to transmit their legislative proposals, reports, or testimony to the Congress without prior clearance. It is the practice of most of the excepted agencies, however, to submit their proposals and testimony simultaneously to OMB. Agencies of the legislative and judicial branches are not covered by this Circular.

In addition to clearance of proposed legislation, supporting documents, reports, and letters sent to Congress at the request of OMB, agencies must clear testimony before a Congressional committee. Each year, agencies must prepare and submit a proposed legislative program for the next session of Congress. The purpose of this program submission is to assist the agencies in planning their legislative program and strategy, help agencies to coordinate among themselves on issues of common concern, and aid OMB and the White House staff in developing a comprehensive Presidential program. These legislative program reports are submitted by the agencies to OMB at the same time they submit their annual budget request.

OMB emphasizes the need for agencies to allow sufficient time to permit OMB to review and evaluate program requests and testimony and to permit other affected agencies to comment. Circular A-19 outlines what each legislative submission by an agency must contain, to include the anticipated budgetary and personnel impact if such legislation is enacted. There must be a review of existing law and regulations on the subject and a comparison with previous agency proposals and related bills and proposals being forwarded by other agencies. Various "impact evaluations", e.g., environmental, are noted and required as part of the legislative submission.

OMB is responsible for necessary coordination with other interested agencies of an agency's proposed legislation or report. Interagency meetings may be called. OMB may transmit advice to the agency respecting their proposed legislation. While the agency need not fully accept OMB's views, it cannot submit legislative proposals that OMB has determined are contrary to the President's overall program.

Circular A-19 also contains instructions for agencies on the enrolled bill process. OMB obtains facsimiles of enrolled bills and transmits them to the affected agencies. They have two days in which to complete their response. Each agency is to analyze the significant features of the bill including changes from existing law. An evaluation of the bill's merits (and demerits) is required. An estimate of the first year and recurring costs and savings is to be included. Finally, the agency is to make a specific recommendation to the President as to whether he should approve or veto the bill.

If an agency recommends disapproval, it is to submit a proposed veto message or memorandum of disapproval. OMB transmits the agency letters to the President, together with a covering memorandum with their recommendation as to approval or disapproval, not later than the fifth day following receipt of the enrolled bill at the White House. Generally, the President will read the folder with the several agency comments and then if he decides to veto the bill, will use the OMB draft statement as the basis for his message to Congress.

RCM/pjg

REGULATORY MANAGEMENT

AT OMB

Morton Rosenberg*

Introduction

The Office of Management and Budget (OMB) has been variously involved in questions of management and organization of the executive branch since the late 1930's. 1/ The nature and extent of that involvement has fluctuated over time, but beginning in the early 1970's 2/ increasingly more aggressive presidential endeavors to secure control of the burgeoning federal bureaucracy, particularly in the area of regulatory management, have made OMB's dominant role a permanent fixture of the government's bureaucratic life.

This significant institutional development did not become a matter of major public debate and controversy, however, until 1981 when President Reagan, fulfilling a campaign promise to eliminate burdensome and unnecessary government regulations, greatly expanded and centralized oversight authority within OMB over the regulatory process. 3/ Shortly after his reelection in 1984 the President took further steps to ensure OMB's central control over agency regulatory decisionmaking. 4/ The consequence of these initiatives has been to totally refocus the process of executive oversight. Unlike the Nixon, Ford and Carter administrations, which used executive oversight primarily as a check on the quality of agency decisionmaking 5/ and the consistency of regulations with macroeconomic objectives, 6/ and provided for decentralized, *ad hoc* review, the Reagan administration has established a process of centralized coordination and review authority in OMB that, in conjunction with its more traditional functions of budget control and agency staffing, has served as an effective vehicle for achieving conformance by executive branch agencies with administration policies and principles.

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1/ Following the transfer of OMB (then known as the Bureau of the Budget) from the Treasury Department to the newly established Executive Office of the President in 1939, see Reorganization Plan No. 1 of 1939, 53 Stat. 1423, the President assigned it the duties and functions of "conduct[ing] research in the development of improved plans of administrative management, and to advise the executive departments and agencies of the Government with respect to improved administrative organization and practice..." and "keep[ing] the President informed of the progress of activities by agencies of the Government with respect to work proposed, work actually initiated, and work completed, together with the relative timing of work between the several agencies of the Government..." E.O. 8248, 4 Fed. Reg. 3864 (1939), 3 C.F.R. 1938-1943 Comp., p. 576. In 1949 Congress directed the President to promulgate regulations for the systematic review of agency operations. 5 U.S.C. 305(b) (1982). The President delegated his authority under this provision to OMB. E.O. 12,152, 44 Fed. Reg. 48,143 (1979), 3 C.F.R. 1979 Comp., p. 423.

2/ The change was signalled by President Nixon's reorganization of OMB in 1970 to give emphasis to its management role. See presidential statement of purpose accompanying Reorganization Plan No. 2 of 1970, 84 Stat. 2085, appearing at 5 U.S.C. Appendix p. 1129 (1982). See generally, Mosher, A Tale of Two Agencies (1984); Berman, The Office of Management and Budget and the Presidency, 1921-1979 (1979); Parris, The Office of Management and Budget: Background, Responsibilities, Recent Issues (CRS, July 27, 1978, #78-158 Gov.).

These developments have engendered a lively debate over their import for the always delicate balance of policymaking control between Congress and the Executive. 7/ Proponents of the President's initiatives see them as long overdue, lawful measures to secure coordinated, rational and effective agency decisionmaking in a time of budget and regulatory crisis. Critics of the presidential actions view them more darkly, charging that the new oversight process at best establishes a system of secret, preferential decisionmaking, and at worst has effected an unlawful usurpation of congressional authority to determine and direct domestic policy.

This chapter will attempt to provide a framework for understanding the nature, origins and potential future path of the controversy. The development of rulemaking as a major decisional tool of the administrative state and early presidential attempts to control agency regulatory decisionmaking are briefly traced. Then the

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3/ See E.O. 12,291, 46 *Fed. Reg.* 13,193 (1981). 3 C.F.R. 1981 Comp., p. 129.

4/ See E.O. 12,498, 50 *Fed. Reg.* 1036 (1985).

5/ See R. Litan & W. Nordhaus, *Reforming Federal Regulation* 67-79 (1983); G. Eads & M. Fix, *Relief or Reform? Reagan's Regulatory Dilemma* 109 (1984).

6/ See T. Hopkins, T. Lenard, J. Morrall & E. Pinkston, A Review of the Regulatory Interventions of the Council on Wage and Price Stability: 1974-1980 (1981).

7/ Commentary in scholarly journals and the press since 1981 has been profuse. Many of the significant ones have been compiled in Walser, Office of Management and Budget: A Selected Annotated Bibliography (CRS, 1985).

operation of the major vehicles for presidential control of agency rulemaking -- Executive Orders 12,291 and 12,498 and the Paperwork Reduction Act -- and their interrelationship are explained in detail, followed by a discussion of the perceived impact of the review program. Next, a review of the legal issues that have been raised and court challenges to OMB's role is presented. Finally, proposals for congressional and executive revision of the current system of review are described and prospects for their adoption are assessed.

1. Regulatory Review in Historical and Legal Perspective

The signal American socio-political development of the last half century has been the rejection of passive, minimalist governance and the acceptance of, and ever increasing demand for, the exertion of governmental efforts to ameliorate perceived social, economic and political wrongs. One of the most prominent characteristics of this active political philosophy has been the emergence of a pattern of pervasive governmental economic and social regulation. In short, we are in the era of the administrative state. 8/

The advent of the administrative state has not been accomplished without subjecting our major constitutional institutions to serious stress. Our Constitution, designed to distribute and limit powers for the governing tasks of far less complex times, was forced to adjust to a change in political philosophy over a short span of time in the

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8/ The term "administrative state" has a substantial degree of popular currency. The substantive content of the concept, however, is often not fully appreciated. A recent attempt at definition captures its breadth and complexity:

> ...The concept of an "administrative state" goes well beyond the idea of delegation of lawmaking power to administrative decisionmakers. Indeed, the concept of an "administrative state" goes even further than the metaphor of a Fourth Branch. Describing administrative lawmakers as a "Fourth Branch" implies that they have achieved parity with the three original branches of government. The "administrative state," on the other hand, suggests that the growth of administrative decisionmaking is significant, not only in its own right, but also because administrative lawmaking has become the central lawmaking institution, and thereby that it has transformed the functions and relationships among other institutions of government. The term "the modern administrative state" implies, in short, that a qualitative change in the nature of government as a whole has resulted from the growth of administrative lawmaking.

Elliot, *INS* v. *Chadha*: The Administrative Constitution, the Constitution, and the Legislative Veto, 1983 *Sup. Ct. Rev.* 125, 166.

midst of continuing and often severe domestic and international crisis. Indeed, the process of constitutional accommodation of the "revolutionary" changes wrought within our established constitutional order appears far from complete. Nevertheless, it is possible to identify several critical developments of the last fifty years that bring us today to another point of potential constitutional conflict, this involving the question of which branch shall have control over the administrative action of executive agencies and the means available to accomplish that control.

a. *The Supreme Court's Legitimation of Standardless Delegations: The Rise and Fall of the Nondelegation Doctrine*

The realities of the economic crisis of the thirties forced the demise of the notion, exemplified by the Supreme Court's decision in *Lochner* v. *New York*, 9/ that the invisible hand of laissez faire economics was functioning simultaneously to protect individual rights and produce a social optimum and that it was therefore illegitimate for a legislature to intervene for the purpose of making the social or economic distribution more just. Remedial legislation was seen as a necessary and proper responsibility of government and Franklin Roosevelt assumed the Presidency in 1933 with the promise of a New Deal based upon this affirmative governmental philosophy. His leadership resulted in the enactment of programs involving extensive federal involvement in economic affairs. This legislative program, while attracting great popular support, immediately came into conflict with the legal philosophy that had guided the Supreme Court since the 1890's, and appeared about to founder in 1935 with two decisions that declared unconstitutional the National Industrial Recovery Act (NIRA), the centerpiece of the early New Deal approach. 10/ The rationale of the decisions was the nondelegation doctrine, which up until that time had been invoked in theory but never in fact. 11/ The Court held that Congress had stated no policy, nor fixed any triggering circumstances, to guide the President in deciding whether to authorize codes regulating interstate commerce: "The Congress left the matter to the President without standard or rule, to be dealt with as he pleased." 12/

9/ *Lochner* v. *New York*, 198 U.S. 45 (1905).

10/ *Panama Refining Co.* v. *Ryan*, 293 U.S. 388 (1935); *Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935).

11/ See, *e.g.*, *Field* v. *Clark*, 143 U.S. 649, 692 (1892) ("That Congress cannot delegate legislative powers to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution"); *The Brig Aurora*, 11 U.S. (7 Cranch) 382 (1813).

12/ *Panama Refining Co.* v. *Ryan*, *supra* note 10, at 418.

The potential inhibition on standardless congressional delegations was short lived, however. Whether the result of political pressure, 13/ judicial change of perception, 14/ or simply the reconstitution of the Court through attrition, 15/ neither the Supreme Court nor any other federal court has invoked the non-delegation doctrine against federal legislation since 1937. In upholding broad delegations the courts have been willing to infer standards to guide delegees even where none have been supplied by the legislature. Alternately, the courts have relied on agencies' procedural protections. These have been found to provide the administrator with sufficiently clear guidance so that a court in reviewing the administrator's action can "ascertain whether the will of Congress has been obeyed." 16/ Thus, the Court has upheld as supplying requisite guidance such statutory phraseology as "generally fair and equitable", 17/ and "just and reasonable", 18/ and, in one case in the absence of any such terminology, a delegation was upheld on the ground that a standard like those mentioned could be inferred from the events leading to the enactment of the statute in question. 19/

This is not to imply that the judiciary has totally abandoned its oversight of agencies' discretionary exercise of delegated authority. Judicial techniques of control have simply shifted. For example, by means of statutory construction courts have narrowed or denied valid delegations without resorting to constitutional declarations of

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13/ I.e., President Roosevelt's threat to pack the Court. See Leuchtenberg, The Origins of Franklin D. Roosevelt's "Court-Packing" Plan, 1966 Sup. Ct. Rev. 347; Leuchtenberg, FDR's Court Packing Plan: A Second Life, A Second Death, 1985 Duke L. J. 673.

14/ Chambers, The Big Switch: Justice Roberts and the Minimum Wage Cases, 10 Labor History 44 (Winter 1969).

15/ By 1941 only Justice Roberts remained among the pre-Roosevelt justices.

16/ Yakus v. United States, 321 U.S. 414, 425 (1944). See also Amalgamated Meat Cutters & Butchers Workmen v. Connally, 337 F. Supp. 737, 746-747 (D.D.C. 1971) (three-judge court). If necessary courts may also look to administrative practice to infer definitions of the standards conditioning particular delegations. Lichter v. United States, 334 U.S. 742, 783 (1948).

17/ Yakus v. United States, 321 U.S. 414, 427 (1944).

18/ F.P.C. v. Hope Natural Gas Co., 320 U.S. 591, 600 (1944).

19/ Arizona v. California, 373 U.S. 546 (1963).

invalidity. 20/ Also, by broadening the concept of judicial standing, and narrowing the limiting doctrines of ripeness and exhaustion of administrative remedies, the courts have afforded wider opportunity for the public to seek, and the courts to engage in, review of agency action. 21/ But the inherent limitations of such sporadic and piecemeal judicial supervision serves to underline the reality that, unless there is an unexpected revival of the non-delegation doctrine, 22/ the courts currently do not present a significant inhibitory threat to standardless congressional delegations.

b. Rulemaking and the Administrative State: The Role of the Courts in Promoting Agency Lawmaking

Not only have the courts provided legitimacy for broad congressional delegations of power, they have virtually singlehandedly changed the way agencies of government exercise that power. The hallmark of our modern administrative state -- agency lawmaking through the process of informal rulemaking -- is a creature of judicial cultivation. With the encouragement of the courts, rulemaking has replaced adjudication as the dominant formal administrative decisionmaking process. 23/

20/ *Kent* v. *Dulles*, 357 U.S. 116, 129 (1958); *Greene* v. *McElroy*, 360 U.S. 474, 509 (1959).

21/ See, *e.g.*, *Barlow* v. *Collins*, 397 U.S. 159 (1970); *Association of Data Processing Serv. Orgs. Inc.* v. *Camp*, 397 U.S. 150 (1970); *Abbott Laboratories* v. *Gardner*, 387 U.S. 136 (1967). The development of more intense judicial scrutiny of agency action is recounted in Stewart, The Reformation of American Administrative Law, 88 *Harv. L. Rev.* 1169 (1975) and DeLong, Informal Rulemaking and the Integration of Law and Policy, 65 *Va. L. Rev.* 257 (1979).

22/ There has been a call for revival of the doctrine. See, *e.g.*, Wright, Book Review, 81 *Yale L. J.* 575, 582-586 (1972); Gellhorn & Byse, *Administrative Law*, p. 78 n. 4 (6th ed. 1974). A recent majority of the Supreme Court has indicated that it would be willing to employ the non-delegation doctrine to invalidate "'sweeping delegation[s] of legislative power'...." *Industrial Union Dept. v. American Petroleum Instit.*, 448 U.S. 607, 646, 674-76, 685-86 (1980). One commentator argues that *INS* v. *Chadha*, 462 U. S. 919 (1983), holding the legislative veto unconstitutional, may foreshadow the use of the doctrine. Abel, *INS* v. *Chadha*: The Future Demise of Legislative Delegation and the Need for a Constitutional Amendment, 11 *J. of Legis.* 317 (1984).

23/ This development is comprehensively treated in legal commentaries. See, *e.g.*, Stewart, "The Reformation of American Administrative Law," 88 *Harv. L. Rev.* 1669 (1975); Verkuil, The Emerging Concept of Administrative Procedure," 78 *Colum. L. Rev.* 258 (1979); DeLong, "Informal Rulemaking and the Integration of Law and

In the two decades following the passage of the Administrative Procedure Act 24/ (APA) in 1946, informal rulemaking 25/ was a modestly utilized mode of agency decisionmaking that vested substantial discretion with agency officials. Although public participation through written comment was required, court interpretations essentially mooted the effect of that participation. An agency was allowed to act on the basis of their assumed expertise, using whatever internal processes and information it desired. 26/ Requiring comments simply gave the agency the opportunity to hear views of knowledgeable outsiders before exercising independent judgment. 27/ They were regarded solely as instruments for the education of the administration. 28/ The agency could base its decision on expertise, unstated political considerations, or an inarticulable intuition. 29/ The agency was free, at the time of review, to support a rule with a "record" not based on the information available to various decision-

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24/ 5 U.S.C. 551-559, 701-706 (1982).

25/ The APA distinguishes between two types of rulemaking: informal or notice and comment rulemaking, and formal rulemaking. The procedural requirements established for informal rulemaking are few and simple. The agency must publish notice of a proposed rule in the Federal Register; allow, at its option, written or oral comments; and accompany final rules with "a concise general statement of their basis and purpose." 5 U.S.C. 553 (b), (c) (1982). The APA declares informal rulemaking to be the preferred method of agency rulemaking. Formal rulemaking, which requires the holding of a full dress, on-the-record proceeding which conforms to the requirements of sections 556 and 557 for adjudicatory hearings, is limited to use in those situations where a statute specifically requires it, 5 U.S.C. 553 (c), or an agency voluntarily adopts such a procedure. The Supreme Court has adhered to this statutory preference. United States v. Florida East Coast Ry. 410 U.S. 224, 234-38 (1973).

26/ See, e.g., Pacific Coast Eastern Conf. v. United States, 350 F. 2d 197, 205 (9th Cir.) cert. denied 382 U.S. 958 (1965).

27/ M. Shapiro, On Predicting the Future of Administrative Law, Regulation 19-20 (May/June 1982) (hereinafter Shapiro).

28/ NLRB v. Seven-Up Bottling Co., 344 U.S. 349 (1953) (dictum); Pacific Coast Eastern Conf. v. United States, 350 F. 2d 197, 205 (9th Cir.) cert. denied, 382 U.S. 958 (1965).

29/ DeLong, Informal Rulemaking and the Integration of Law and Policy, 65 Va. L. Rev. 257, 272 (1979).

makers during the rule's formation. 30/ On review, a court would uphold the agency action if it found the rule within the scope of the agency's authority and not arbitrary and capricious. That is, the court would uphold the rule if the agency could construct a plausible supporting hypothesis. This standard of review gave an agency immense discretion. Professor Martin Shapiro has characterized the role of the agencies and courts during this period and the reasons for this posture as follows:

> In the early 1930's the New Deal created a government based on concentrating power in the hands of technically expert administrative agencies. By the early 1940's administrative law had been well shaped to express this theory. The new judges enunciated a theory of review that was a restatement of the progressive political theory. Power must be concentrated to be effective; and it must be wielded by experts in order to achieve rational results. Thus judges, who were not technically expert, must defer to agencies, who were. The central doctrines of the administrative law of the 1940's were the twin presumptions that agencies had correctly found the facts and had correctly found the law. Given such presumptions, there was nothing for the judges to do. They effectively transferred their power over regulation to the agencies at the same time they gave constitutional approval to the delegation of congressional regulatory power to the same agencies. Voila technocracy -- rule by expert agencies. 31/

By the 1960's, however, criticism of the prevailing rulemaking model began to swell. Presidential commissions, 32/ jurists, 33/

30/ Pederson, Formal Records and Informal Rulemaking, 85 *Yale L. J.* 38, 62-65 (1975); Nathanson, Probing the Mind of the Administrator: Hearing Variations and Standards of Review Under the Administrative Procedure Act and Other Federal Statutes, 75 *Colum. L. Rev.* 721, 754-55 (1975).

31/ Shapiro, *supra* note 27 at 19.

32/ See, Landis, *Report on Regulatory Agencies to the President Elect* (1960); *Report of the ABA Commission to Study the Federal Trade Commission* (1969) (Requested by President Nixon); *Report of the President's Advisory Council on Executive Organinzation, A New Regulatory Framework* (1971) (Ash Report).

33/ *E.g.*, H. Friendly, *The Federal Administrative Agencies: The Need for Better Definition of Standards* (1962); Eistreicher, "Pragmatic Justice: The Contributions of Judge Harold Leventhal to Administrative Law," 80 *Colum. L. Rev.* 894 (1980).

academics, 34/ and so-called public interest protectors, 35/ fueled in great measure by the immense growth in the role of the federal government, both in terms of the national resources allocated by the government and the degree of intrusiveness into individual decisions, expressed skepticism about both the substance and form of government decisionmaking. The product of many agencies' deliberations, these critics argued, was not a flexible policy, but no policy at all, and which in some instances resulted in favoritism or uncertainty. The proliferation of the government's reach also raised questions as to the continued validity of the notion of the "expert" administrator.

The cumulative effect of these criticisms was a revolutionary overhaul of the whole structure of administrative regulation. Spearheaded by the courts, beginning in the mid 1960's and accelerating rapidly during the early years of the 1970's, a new consensus about agency policymaking began to emerge. 36/ The key doctrinal shift was the enhanced emphasis on rulemaking as a method of formulating policy. Doubts about some agencies' legal authority to issue binding rules were erased by a series of judicial decisions. 37/ Congress joined in this trend by granting broad rulemaking power in new regulatory statutes 38/ and by increasingly resorting to "action-forcing" techniques to compel prospective adoption of policies. 39/ Courts invoked a variety of legal grounds -- due process, 40/ organic statutes and internal agency procedures, 41/ or

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34/ *E.g.*, K. Davis, *Discretionary Justice* (1969); M. Edelman, *The Symbolic Use of Politics*, 22-66 (1964); T. Lowi, *The End of Liberalism*, 92-126 (2d ed. 1979).

35/ See, *e.g.*, E. Cox, R. Fellmeth and J. Schulz, *The Nader Report on the Federal Trade Commission* (1969); R. Fellmeth, *The Interstate Commerce Commission* (1970).

36/ See articles referred to in note 23 *supra*.

37/ *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *FPC* v. *Texaco, Inc.*, 388 U.S. 33 (1964); *National Petroleum Refiners Ass'n* v. *FTC*, 482 F. 2d 672 (D.C. Cir. 1973).

38/ See, *e.g.*, Consumer Product Safety Act, 15 U.S.C. 2059 (1982).

39/ See R. Stewart and J. Krier, *Environmental Law and Policy* 371-73 (2d ed. 1978).

40/ See, *e.g.*, *Soglin* v. *Kauffman*, 418 F. 2d 163 (7th Cir. 1969); *Holmes* v. *N.Y. Housing Authority*, 398 F. 2d 262, 264-65 (2d Cir. 1968); *Hornsby* v. *Allen*, 326 F. 2d 605, 609-610 (5th Cir. 1964).

41/ *E.g.*, *Morton* v. *Ruiz*, 415 U.S. 199, 231-36 (1974).

abuse of discretion 42/ -- for finding an obligation to proceed by rulemaking. Informal rulemaking became the presumptive and judicially preferred mode of policymaking procedure. 43/

The courts not only demanded greater use of rulemaking for elaborating policy, but also radically transformed the ways in which agencies make rules and courts review them. Led by the Court of Appeals for the District of Columbia, creative judicial interpretations of the Administrative Procedure Act and of the agencies' organic statutes made rulemaking dramatically more accessible and procedurally formal. Courts lowered the barriers to public access to both courts and agencies by relaxing the rules of standing, ripeness, and exhaustion. 44/ Then, such access was made meaningful by requiring that a rulemaking record contain the material on which the agency actually based its decision 45/ and that the agency fully explain how it reached its conclusion. 46/ Finally, these requirements for greater public access and procedural formality have been accompanied by more exacting review of substantive agency decisions. The very label used to describe modern review of agency rulemaking -- the "hard look" doctrine -- captures the sense of transformation just described. Reviewing courts apparently are no longer content to affirm based upon the intuitive plausibility of the link between the policy announced and the statutory standard. An agency must be prepared to demonstrate the superiority of the choice made over others advanced by outside participants or conceived by the agency itself.

42/ See, *Bokat* v. *Sureck*, 637 F. 2d 1315, 1317 (9th Cir. 1981).

43/ *United States* v. *Florida Coast Railway*, 410 U.S. 224 (1973).

44/ See, *e.g.*, *Barlow* v. *Collins*, 397 U.S. 159 (1970); *Association of Data Processing Serv. Orgs., Inc.*, v. *Camp*, 397 U.S. 150 (standing); *Gardner* v. *Toilet Goods Ass'n.*, 387 U.S. 167 (1967); *Abbot Laboratories* v. *Gardner*, 387 U.S. 136 (1967) (ripeness); see, generally, Fuchs, "Prerequisites to Judicial Review of Administrative Action," 51 *Ind. L. J.* 817 (1976).

45/ *United States* v. *Nova Scotia Food Prod. Corp.*, 568 F. 2d 240, 251-52 (2d Cir. 1977); *Industrial Union Dept.* v. *Hodgson*, 499 F. 2d 267, 475-76, 488 (D.C. Cir. 1974); *Portland Cement Assoc.* v. *Ruckelshaus*, 486 F. 2d 375, 393, n. 67 (D.C. Cir. 1973), *cert. denied* 417 U.S. 921 (1974).

46/ *Automotive Parts Accessories Ass'n* v. *Boyd*, 407 F. 2d 330, 338 (D.C. Cir. 1968); *United States* v. *Nova Scotia Food Prod. Corp.*, 568 F. 2d 240, 252-53 (2d Cir. 1977); *United States Lines, Inc.* v. *FMC*, 584 F. 2d 519, 533-35 (D.C. Cir. 1978).

To enforce that requirement courts examine, often in painstaking detail, the agency's factual predicate, analytical methodology, and chain of reasoning. 47/

In sum, then, this significant development in the mode of agency decisionmaking may be seen as a natural concomitant to the legitimation by the Supreme Court of broad delegations of authority by Congress to administrative agencies. As Congress expanded the scope of the government's reach and power, both the inefficiency of the adjudicatory process to carry out the new governmental tasks and the essentially unrepresentative nature of agency rulemaking as it was practiced in the two decades following the passage of the APA in 1946, became the focus of judicial attention. The solution was to "democratize" APA rulemaking and to encourage its utilization by the agencies. Since 1970, the federal courts of appeals, with the support of the Supreme Court, have reshaped the structure of informal rulemaking in a series of decisions expanding both the obligations of agencies and the role of reviewing courts. The result has been the transformation, without the benefit of legislative amendment, of informal rulemaking into a new on-the-record proceeding that has fostered widespread public participation in the process.

c. Rulemaking and the Administrative State: The Demand for Accountability in Administrative Lawmaking

This brief historical and legal overview serves to introduce and focus on the critical conflict underlying the evolution of regulatory review over the last decade and a half: the constitutional tension created by the necessity to delegate increasing amounts of legislative power to administrative agencies to accomplish the expanded objectives of government while at the same time maintaining congressional control and responsibility over the exercise of the delegated authority. The parallel development of legislative and executive review mechanisms have been a direct response to this problem.

(i) The Congressional Response: Reliance on the Legislative Veto

In delegating authority to the President or an agency of government, Congress faces a fundamental dilemma. Delegation of broad

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47/ State Farm Mutual Automobile Ins. Co. v. Dept. of Transportation, 680 F. 2d 206, 223-30 (D.C. Cir. 1982), aff'd sub. nom. Motor Vehicles Manufacturers Assoc. v. State Farm Mutual Automobiles Ins. Co., 463 U.S. 29 (1983) (Supreme Court explicitly approves of "hard look" review); Aqua Slide N' Dive v. CPSC, 569 F. 2d 831, 837-38 (5th Cir. 1978); Ethyl Corp. v. EPA, 541 F. 2d 1, 34-36, (D.C. Cir. 1975), cert. denied 426 U.S. 961 (1976); South Terminal Corp. v. EPA, 504 F. 2d 646, 665-66 (1st Cir. 1974). See also, Garland, Deregulation and Judicial Review, 98 Harv. L. Rev. 505 (1985) (courts are engaging in substantive review).

authority runs counter to the basic democratic tenets of our system of government. The nondelegation doctrine sums up those basic understandings: broad delegations of power must be controlled so "that the fundamental policy decisions in our society will be made not by an appointed official but by the body immediately responsible to the people." 48/ When Congress delegates broad powers over reorganization, war, budgets, energy or regulation, the electorate can no longer hold Congress directly responsible for its exercise of those powers, and it thereby risks unaccountable national policymaking. Thus Congress often voices reluctance to allow broad delegations of legislative power.

But since the 1930's Congress has faced almost continual domestic and international crises and seemingly irrepressible popular demands for increased social programs, and bowed to the apparent necessity of broad delegations of authority. As a consequence, whether by inadvertence or acquiescence, a substantial measure of the vastly expanded policymaking responsibilities was shifted from the elected legislators to the Executive. 49/

Although Congress was aware of these developments, it was not spurred to any action until the 1970's. Then, intensifying pressure for deregulation brought by various sectors of the business community, the revival of strong populist feelings against a sense of overwhelming governmental presence in all aspects of private endeavor, and reaction to Watergate, all of which seemed to embody the shortcomings of the unrestrained administrative state, prompted increased congressional reliance on the legislative veto. 50/

48/ Arizona v. California, 373 U.S. 546, 626 (Harlan, J. dissenting in part).

49/ McGowan, Congress, Court, and Control of Delegated Power, 77 Colum. L. Rev. 1119 n. 39 (1977) (hereinafter, McGowan).

50/ Briefly, the legislative veto is a statutorily authorized means by which the Congress, or a part of it, such as one House, a committee, or a committee chairman, may subject proposals for executive action pursuant to statute to further legislative consideration and control. In its most controversial form, a proposal must be either reformulated or abandoned. But common to all varieties of the veto mechanism is the inability of the President to counter-veto a congressional rejection.

For an influential work in support of regulatory reform during this period see Federal Regulation: Roads to Reform (1978), a report by the American Bar Association's Commission on Law and the Economy which traces the history of formal regulatory reform efforts and presents a case for deregulation and increased presidential control over agency rulemaking. See also, Dixon, The Congressional Veto and Separation of Powers: The Executive on a Leash, 56 North Carolina L.R. 423, 424-425 (1978); Cutler & Johnson, Regulation and the

Congress arrived at the perception, whether rightly or wrongly, that its traditional mechanisms of control of administrative action, such as the authorizations and appropriations process, committee oversight, or investigations, had become inadequate. Thus throughout the 1970's Congress used legislative review to respond to broad presidential claims of war, impoundment, and national emergency powers, to deal with the energy crisis, and to solve the problems raised by broad delegations of rulemaking authority necessary to effectuate complex social and economic programs. Indeed, in 1982 the Senate unanimously passed legislation that would have imposed a two-House legislative veto on all agency rules. 51/

The legislative veto, then, by the early 1980's was the clearest and most eagerly pursued congressional indication of its desire to maintain control over administrative decisionmaking generally and agency rulemaking in particular. In 1983, however, the Supreme Court abruptly and decisively brought an end to Congress' reliance on the mechanism. In INS v. Chadha 52/ the Court ruled that the constitutional mandate of bicameral consideration and presentment to the President for his signature or veto is a universal requirement for all exercises of legislative power. Subsequent decisions have made it clear that the Court meant to preclude use of all forms of the veto. 53/ The immediate result of the Court's decision was to create a power void with respect to rulemaking control which the Executive was willing and able to take prompt advantage and to which Congress has as yet to effectively respond. 54/

(ii) The Executive Response: Presidential Control of Agency Rulemaking

Transforming Congress' broad mandates into comprehensive, workable and effective regulatory schemes has never been an easy task. Predictable opposition by the objects of regulation was buttressed in the 1970's by growing evidence of the rapidly rising costs of regulation on the private sector, 55/ the growing need to

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51/ S. 1080, 97th Cong. 1st Sess., 128 Cong. Rec. S 2713 (daily ed. March 24, 1982).

52/ 462 U.S. 919 (1983).

53/ Process Gas Consumers Group et al. v. Consumer Energy Council of America, 463 U.S. 1216 (1983).

54/ See Fisher, Judicial Misjudgments About the Lawmaking Process: The Legislative Veto Case, 45 Pub. Adm. Rev. 705 (November 1985).

55/ See, *e.g.*, M. Weidenbaum & R. DeFina, The Cost of Federal Regulation on Economic Activity (1976).

coordinate the activities of federal regulatory agencies and to eliminate conflicts in statutes, overlapping jurisdictions, 56/ and the inevitable bureaucratic foul ups and mistakes that occur in complex social and economic programs. Critics promoted a perception of a bureaucracy out of control, of agencies engaged in administrative lawmaking without consideration of competing interests or the economic impact of their decisions, a view that received substantial support in the rhetoric of the successful campaigns of Presidents Carter and Reagan in 1976 and 1980. The solution voiced by many of these critics was increased centralization of the power to coordinate and supervise the regulatory decisionmaking activities of the agencies in the hands of the President. 57/ In fact, movement toward that end had already begun.

In 1971 President Nixon instituted the first systematic attempt to establish regulatory oversight. So-called Quality of Life Review was a process, supervised by OMB, which required interagency review of environmental, consumer protection, and other health nd safety regulations both prior to publication as proposed and final rules. Although theoretically applicable to all agencies with such subject matter jurisdiction, in practice review focused on Environmental Protection Agency (EPA) regulations. OMB coordinated the review which involved circulation of draft regulations to all interested departments and agencies. OMB controlled time limits for submission of comments and the decision whether to hold meetings to resolve interagency disputes. White House staff would often be called in to assist in resolving conflicts. 58/

Quality of Life Review was controversial throughout its existence. 59/ Proponents contended that any delays in the rulemaking process were justified by the improved quality of both the proposals and the supporting analyses produced by EPA to support its proposals. The improvements were directly attributed to the searching comments and critiques of sister agencies. Critics contended that the review unnecessarily extended the rulemaking process, often delaying significant proceedings at least two years, and allowed many important

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56/ See, e.g., ABA Study, supra note 50.

57/ Id.

58/ J. Quarles, Cleaning Up America 117-42 (1976).

59/ Bruff, Presidential Power and Administrative Rulemaking, 88 Yale L. J. 451, 464-65 (1979); Executive Branch Review of Environmental Regulations: Hearings Before the Subcomm. on Environmental Regulation of the Senate Comm. on Environment and Public Works, 96th Cong., 1st Sess. 60-76 (1979) (Statement of John Quarles); Office of Management and Budget Plays Critical Part in Environmental Policymaking, Faces Little External Review, 7 Envir. Rep. (BNA), Sept. 3, 1976, at 693, 694-97.

comments and discussions to occur off the public record, thereby depriving the system of the full benefits of public debate. Furthermore, it was contended that the system in actuality resulted in behind the scenes resolutions to accommodate the objections of other agencies. This, assertedly, was contrary to the statutory assignment of ultimate decisionmaking authority in the Administrator of EPA. Quality of Life Review was ended shortly after the inauguration of Jimmy Carter in 1977.

President Ford's Executive Order 11,821 60/ expanded the concept of regulatory review to include all executive agencies. Agencies were required to assess the inflationary impact of proposed "major" rules prior to publication as proposed rules. The rules were to be accompanied by inflationary impact statements which were reviewed by the President's Council on Wage and Price Stability (COWPS), but that body had no power to mandate changes in the rules. OMB was responsible for implementing the order and prescribing the procedures for conducting the preparation of the impact analyses. There is some indication that the Ford Order stimulated improvement in the economic analyses of some affected agencies and may have influenced some agency decisions. 61/

President Carter issued an order of even broader scope. His Executive Order 12,044 62/ attempted to ensure more meaningful public participation in informal rulemaking by setting a minimum 60-day comment period in certain cases. It also provided for review of "significant" proposed rules by the promulgating agency. Under certain circumstances, agencies were required to analyze the anticipated impact of a proposed rule and to detail their consideration of the available alternative approaches. The agencies themselves determined whether a rule was significant and developed the procedures for preparing regulatory analyses. They were also required to prepare semi-annual agendas of forthcoming rulemaking proceedings. Oversight of the performance of the agencies was lodged in three institutional entities: the Regulatory Council, the Council on Wage and Price Stability (COWPS), and the Regulatory Analysis Review Group (RARG). The Regulatory council, which consisted of the heads of all executive departments and agencies and those independent regulatory agency heads who desired to participate, played two roles. It collected information from agencies about major pending and proposed rules and published it semianually in the Regulatory Calendar. It also served as a prescreening body for proposed rules, allowing agencies to coordinate rulemaking to avoid duplication of effort or contradictions of policy. RARG, composed or representatives from all economic and

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60/ 3 C.F.R. 1971-1975 Comp., p. 926.

61/ ABA Study, *supra* note 50, at 85; Note, The Inflation Impact Statement Program: An Assessment of the First Two Years, 26 *Am. U. L. Rev.* 1138, 1160-62 (1977).

62/ 3 C.F.R. 1979 Comp., p. 1979.

regulatory agencies, chaired by the Chairman of the Council of Economic Advisors, and staffed by individuals from COWPS, had the task of selecting from 10 to 20 of the agencies' regulatory analyses for independent review and comment. The comments were to be filed during the public comment period of the rulemaking and made part of the record. But, as with the Ford Order, Executive Order 12,044 vested no formal enforcement authority in any governmental body outside of the subject agencies. It also provided no central standard setting and performance evaluation mechanism by which to judge the efficacy of the regulatory analyses that the agencies were required to perform. The Order depended entirely on hortatory means for achieving compliance, a task made most difficult by the presence of the subject agency on the interagency groups. 63/

Thus when President Reagan took office in 1981 there was precedent for presidential direction of agency attention to factors beyond their narrow statutory purview, but none to allow interference with an agency's discretion to decide how to balance the additional information that they were required to generate. Nor did any previous orders establish any formal mechanism for enforcement of review requirements.

President Reagan's Executive Order 12,291, 64/ issued shortly after he took office, was immediately noted as a marked departure from past practice. 65/ The heart of the Order is its requirement that "major" rules survive cost-benefit analysis. Section 2, which applies to the extent permitted by law, stipulates that regulatory action may not be taken unless, "taking into account affected industries [and] the condition of the national economy," the potential benefits to society outweigh potential costs, and net benefits are at a maximum. To implement these directives, the Order requires agencies to prepare a Regulatory Impact Analysis (RIA) for each proposed and final major rule. Each RIA must contain descriptions of the costs and benefits of the rule and of any alternative approaches which could achieve the regulatory goal at lower cost.

President Reagan authorized the Office of Information and Regulatory Affairs (OIRA) within OMB to review proposed and final

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63/ For a critique of the Carter Order program, see DeMuth, Constraining Regulatory Costs: Part I, The White House Programs, Regulation, Jan./Feb. 1980, at 13-26; Deregulation HQ: An Interview with Murray L. Weidenbaum and James C. Miller III, Regulation, Mar./Apr. 1981, at 14-16.

64/ 3 C.F.R. 1981 Comp., p. 127, 46 Fed. Reg. 13,193 (1981).

65/ See, e.g., Presidential Control of Agency Rulemaking: An Analysis of Constitutional Issues That May Be Raised By Executive Order 12,291, House Comm. on Energy & Commerce, 97th Cong., 1st Sess. (1981) (Comm. Print #97-O). (Presidential Control).

rules (and supporting RIA's) for consistency with the Order. Agencies may not publish a proposed rule until OIRA has certified its consistency with the Executive Order. OIRA may delay issuance of a final rule until an agency has considered and responded to OIRA's views. In addition to reviewing new regulations, OMB may direct agencies to initiate reviews of existing rules in accordance with the substantive provisions of the Order.

Upon his reelection, President Reagan further expanded executive control of agency rulemaking activities by the promulgation of Executive Order 12,498. 66/ Under this new Order, agencies each year are required to establish a regulatory agenda which is subject to review by OMB. The agenda must detail every agency regulatory activity "planned or underway," including the "development of documents that may influence, anticipate, or could lead to the commencement of rulemaking proceedings at a later date." The annual agency submissions must "explain how they are consistent with the Administration's regulatory principles." If OMB decides that a proposed action is not consistent with those principles, it may not be pursued by an agency. If during the year an agency wants to undertake an activity that was not part of the approved regulatory program, it must seek OMB approval. Thus an agency may not engage in a regulatory activity not approved by OMB unless it is so required by Congress or court order.

The purpose of the new Order, as explained by the President and OMB, is to fill the void left by statutes and E. O. 12,291 which deal only with the final stage of the regulatory process. "Developing a governmental rule often involves years of studies, hearings, and intermediate decisions before even a proposed rule is issued for public comment. Frequently, senior agency officials are involved only after these earlier activities have greatly narrowed the options for final action and precluded effective Administration policy review." 67/ Early review of any agency action that might lead to the promulgation of a rule is intended to insure that regulatory priorities of agencies are coordinated and by this means it is hoped agency resources will not be expended on regulatory activities that are inconsistent with the regulatory goals of the President and agency heads. 68/

OMB has integrated regulatory review authority with a broad array of other oversight functions. Most closely related to the regulatory review functions under E. O.'s 12,291 and 12,498 is its authority over agency information collections. OIRA was initially established to

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66/ 50 Fed. Reg. 1036 (1985).

67/ Memorandum for the Heads of Executive Departments and Agencies, "Development of Administrations and Agencies, Regulatory Program" from President Ronald Reagan, January 4, 1985.

68/ OMB Bulletin No. 85-9, January 10, 1985, sec. 7 (OMB Bulletin).

implement the Paperwork Reduction Act of 1980. 69/ Under this Act, OIRA is responsible for setting Government-wide information policies and ensuring that agency information collection and recordkeeping requirements are consonant with these policies. OMB desk officers also screen all legislative proposals before agencies may present them to Congress. 70/ In addition, OMB oversees regulatory programs indirectly through its traditional roles of preparing the federal budget 71/ and reviewing agency staffing levels. 72/

Thus OMB appears to possess significant power to influence agency regulatory decisionmaking. The following section describes in greater detail the workings of the two orders and OIRA's information collection review activities under the Paperwork Act, and explain the close interrelationship of the three authorities. This is followed by an assessment of the impact of the OMB regulatory management program.

2. OMB and Agency Rulemaking: A Description of the Regulatory Review Process Under Executive Orders 12,498 and 12,291 and the Paperwork Reduction Act

The requirements of Executive Orders 12,498 and 12,291 and the information collection standards imposed by OMB pursuant to its authority under the Paperwork Act may be properly viewed as a comprehensive, integrated process for presidential review and control of agency development of rules, from initial formulation to final promulgation. This section describes in detail the steps and requirements at each stage of the process.

69/ Pub. L. No. 96-511 (1980), codified at 44 U.S.C. 3501 *et seq.* (1982).

70/ OMB Circular No. A-19, "Legislative Coordination and Clearance."

71/ 31 U.S.C. 1101-1114 (1982); OMB Circular No. A-10, "Responsibilities for Disclosure with Respect to the Budget,"; OMB Circular No. A-11, "Preparation and Submission of Budget Requests." See also, Schick, The Budget As An Instrument of Presidential Policy, in *The Reagan Presidency and the Governing of America*, 91-134 (L. Salamon, and M. Lund, eds. 1984).

72/ OMB Circular No. A-11, *id.*

a. Executive Order 12,498

Under E. O. 12,498, each agency subject to E. O. 12,291 73/ must develop a "Regulatory Program" specifying "all significant regulatory actions....planned or underway, including...the development of documents that may influence, anticipate, or could lead to the commencement of rulemaking proceedings." 74/ OMB has defined the term "significant regulatory action" as "any prerulemaking action or rulemaking action that would be a step toward adoption of a rule." 75/ In turn, "prerulemaking action" is defined as "any important action taken to consider whether to initiate, or in contemplation of, rulemaking; publication of advance notices of proposed rulemaking and all similar notices, publications, and requests for public comment; and development or dissemination of draft guidelines, policy proposals, strategy statements, and similar documents that may influence, anticipate or could lead to the commencement of rulemaking proceedings at a later date." 76/ As examples of such prerulemaking actions OMB has cited decisions to create a task force to evaluate the need for a rule, studies to assess an economic problem related to possible regulatory action, and analyses of health and safety risks concerning a hazard that may require a rule.

A significant regulatory action would also encompass prerulemaking or rulemaking actions that are or would be "(1) a 'major rule' as defined by section 1(b) or 3(b) of E. O. No. 12,291; (2) a priority of the agency head; (3) subject to a statutory or judicial deadline; (4) of unusual interest to other Federal agencies; (5) of unusual public interest; (6) likely to establish an important new policy or legal precedent; or (7) designated by the Director of OMB to warrant review as a significant regulatory action." 77/

73/ The following federal agencies are covered by the Orders: Department of Agriculture; Department of Commerce; Department of Education; Department of Energy; Department of Health and Human Services; Department of Housing and Urban Development; Department of Interior; Department of Justice; Department of Labor; Department of Transportation; Department of the Treasury; Environmental Protection Agency; Equal Employment Opportunity Commission; General Services Administration; Office of Personnel Management; Small Business Administration; and the Veterans Administration. The Department of Defense and all independent regulatory agencies are not covered.

74/ E. O. 12,498, sec. 2(a).

75/ OMB Bulletin, sec. 5c.

76/ OMB Bulletin, sec. 5a.

77/ OMB Bulletin, sec. 5c.

On review of agency submissions, OMB determines whether the program is consistent with the "Administration's policies and priorities," 78/ and may include further regulatory or deregulatory actions.79/ A regulatory action omitted from the Regulatory Program, or materially different from an action described in the approved program, may not be undertaken by the agency without OMB approval, unless an emergency exists or a judicial or statutory deadline applies. 80/ Any rule that is subject to E. O. 12,291 but was not included in a program for that year may, "to the extent permitted by law," be returned for reconsideration. 81/ Regulatory actions which were not included in the years listing but are not subject to E. O. 12,291, i.e., prerulemaking actions, may be undertaken ten days after submission to OMB unless the agency is notified to stay its action further. 82/ Where a disagreement arises over OMB's determination that an action not be included in the final program list, the agency may appeal to the President, or to a cabinet council or other forum he may designate. 83/

Until OMB approval is received, all agency regulatory action is automatically stayed. 84/ OMB is authorized to take any actions necessary to implement the Order, "to the extent permitted by law." 85/ OMB has specifically disclaimed that its implementing directions are intended to "be construed as displacing the agencies' responsibilities delegated by law." 86/

b. Executive Order 12,291

As has been indicated, there is some overlap between the orders, e.g., a rulemaking action that would be subject to E. O. 12,291 that has not been included in an annual program is automatically stayed. Under E. O. 12,498 a rulemaking action includes the "publication of any notice or proposed rulemaking, final rule, or other statement of

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78/ E. O. 12,498, sec. 3(a)(i).

79/ E. O. 12,498 sec. 3(a)(ii).

80/ E. O. 12,498, sec. 3(c).

81/ E. O. 12,498, sec. 3(d).

82/ E. O. 12,498, sec. 3(c).

83/ E. O. 12,498, sec. 3(a).

84/ E. O. 12,498, sec. 3(c). The sole exceptions are non-E. O. 12,291 actions, and actions subject to court or congressional deadlines.

85/ E. O. 12,498, sec. 4.

86/ OMB Bulletin, sec. 9(d).

general applicability and future effect designed to implement, interpret, or prescribe law or policy." 87/ But once the requirements of E. O. 12,498 have been satisfied, the prescriptions of E. O. 12,291 come into play. The process under this order may be sketched as follows: All proposed rules of all executive agencies must be submitted to OMB's Office of Information and Regulatory Affairs (OIRA) before publication in the Federal Register. 88/ If an agency deems a proposed rule minor, it must be submitted to OMB at least 10 days prior to publication. 89/ If within that period, however, OMB determines a proposed rule major, the agency must prepare a preliminary Regulatory Impact Analysis (RIA) assessing the rule's costs and benefits for review. 90/ RIA's are significant since under the Order no regulatory action may be undertaken unless "taking into account affected industries [and] the condition of the national economy," the potential benefits to society outweigh potential costs, and net benefits are at a maximum. 91/ If an agency itself determines the rule in question is major, it must be submitted, together with its RIA, at least 60 days before publication. If on review OIRA finds that a preliminary RIA is deficient, it may order a delay in publication of the proposed rule and require consultation with it or other agencies. 92/

Similarly, final RIA's must be prepared and submitted to OIRA at least 30 days prior to publication of the proposed rule as final. 93/ OIRA may order the agency to refrain from publishing a final rule and RIA until it has submitted its comments and the agency has responded. 94/ The Order does not impose any time limits on OIRA to complete its review and submit comments to either preliminary or final RIA's. OIRA's negative comments and the agency's response to them must be placed on the public record of the proceeding. 95/ But the Order does not require any other comments or communications between OMB officials and the agency, or contacts with any interested persons by OMB, to be placed on the public record of a particular rulemaking

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87/ E. O. 12,498, sec. 5b.

88/ E. O. 12,291, sec. 3(c).

89/ E. O. 12,291 sec. 3(c)(3).

90/ E. O. 12,291, Sec. 3(f).

91/ E. O. 12,291, sec. 2(b).

92/ E. O. 12,291, sec. 3(c)(2), 3(f)(1).

93/ E. O. 12,291, sec. 3(c)(2).

94/ E. O. 12,291, sec. 3(f)(2).

95/ Id.

proceeding. The Director of OMB, however, has issued notice that OMB would advise members of the public who have submitted factual material to it to send such factual material to the proposing agency. 96/ Where warranted, OMB will send materials to the relevant agency on its own, as well as internally developed factual material, which will be placed on the record. However, a General Accounting Office study found that "OMB has no monitoring system to ensure that this takes place." 97/ Moreover, these guidelines do no apply to legal or policy arguments, or to oral communications, and particularly those with the President and the White House staff.

OMB's authority also extends to existing rules. 98/ It may designate any existing rule or related set of rules as major and require that it be subjected to cost-benefit review and analysis on a schedule set by it. 99/ In addition, OMB can require an agency to obtain and evaluate in connection with any rule any additional relevant data from any appropriate source. 100/

Finally, the Director of OMB may discretionarily waive any or all the requirements of the Order. 101/ Before it was disbanded, OMB decisions were subject to review by the Presidential Task Force on regulatory Relief, a body that was headed by the Vice-President, included the Director of OMB as a member, and was staffed by OMB. 102/ The only official appeal now appears to be with the President.

96/ See Memorandum from David A. Stockman, Director, OMB to Heads of Executive Departments and Agencies, "Certain Communications Pursuant to E. O. 12,291" (June 11, 1981).

97/ General Accounting Office. "Improved Quality, Adequate Resources, and Consistent Oversight Needed of Regulatory Analysi's as to help control cost of regulation, 53-554 (November 4, 1982).

98/ E. O. 12,291, sec. 6(a)(1).

99/ E. O. 12,291, secs. 3(b), 6(a)(1).

100/ E. O. 12,291, sec. 6(a)(3).

101/ E. O. 12,291 secs. 6(a)(4), 8(b).

102/ E. O. 12,291, sec. 3(e)(1).

c. The Paperwork Act

Under the Paperwork Act 103/ OMB has broad authority to control the collection of information by governmental agencies. The Act, and the regulations issued under it, 104/ require that before any agency undertakes an information collection activity it must demonstrate that its "information collection request" 105/ is

(1) "the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;"

(2) "not duplicative of information otherwise accessible to the agency;" and

(3) of "practical utility." 106/

If OMB approves the agency proposal, it is given an OMB control number which must be displayed on every form, and is good for no more than three years. If the agency wishes to keep collecting the information after the expiration of the OMB approval, the agency must resubmit for OMB review and reapproval. If OMB does not approve, the agency may not collect the information.

There are two basic OMB approval tracks. Where an information collection requirement is contained in a proposed rule, the proposal must be submitted to OMB no later than the date of its publication in the Federal Register. The Director of OMB then has 60 days to file public comments to the rule which then must be responded to by the agency when it files its final rule in the Federal Register. If the Director finds the agency's response unreasonable, he may disapprove the collection requirement if he acts within 60 days of the publication of the final rule. If the Director makes no comment within the initial 60 day public comment period, the proposed requirement is deemed approved. 107/ A proposed information collection request not part of a proposed rule must be submitted to OMB for review for a period of 60 days, which may be extended another 30 days upon notice by the Director. If at the end of the review period OMB does not

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103/ 44 U.S.C. 3501 et seq. (1982).

104/ 48 Fed. Reg. 13, 666 (1983), codified at 5 C.F.R. 1320 (1985).

105/ The term is defined by the Act to mean "a written report form, application form, schedule, questionnaire, reporting or recordkeeping requirement, or other similar method calling for the collection of information." 44 U.S.C. 3502 (11) (1982).

106/ 5 C.F.R. 1320 4(b) & (c) (1985). See also 44 U.S.C. 3508 (1982).

107/ 44 U.S.C. 3504(h) (1982); 5 C.F.R. 1320.13 (1985).

disapprove the request, it is deemed approved and a control number must be issued. Disapprovals may be overridden by the majority vote of independent regulatory agencies, but by no other type agency. 108/

Certain exemptions are provided under section 3518. Collections of information are excluded from the requirements of the Act (1) during the conduct of a criminal investigation or prosecution, or during the disposition of a particular criminal matter; (2) during the conduct of a civil action to which the United States or any official or agency is a party, or an administrative action or investigation involving an agency against specific individuals or entities; (3) when collection of information is a result of compulsory process pursuant to the Antitrust Civil Process Act; and (4) for information gathering activities for the purpose of foreign and counterintelligence as defined in Executive Order 12,036 or successor orders. But a collection of information during the conduct of general investigations with reference to a category of individuals or entities such as a class of licensees or an entire industry is covered. 109/

Section 3518(e) further qualifies the authority of the President and OMB under the Act by providing that:

> Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

The scope of this qualification has become a matter of concern. 110/ The legislative history of the Act demonstrates a general concern that the authority vested in OMB could be utilized to affect or undermine the substantive policies of congressional enactments. Thus Congress made it clear that it did not intend the Act to be a "regulatory reform" bill. The Senate Committee report states in this regard:

> The Committee intends that the Director of OMB continue efforts to oversee the information management and burden aspects of government regulations. This emphasis has great promise for minimizing the explosion of paperwork demands on the public because new regulations are causing the greatest growth in information requirement. However, the Committee

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108/ 44 U.S.C. 3507 (1982); 5 C.F.R. 1320.13 (1985).

109/ 44 U.S.C. 3518(c) (1982).

110/ See discussion, *infra*, p. 35.

> does not intend that regulatory reform issues which go beyond the scope of information management and burden be assigned to the Office.111/

With specific reference to substantive interference, the Senate report explained:

> Section 3518(e) provides that nothing in this Act affects in any way the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices. This provision results from concern that the authority of this Act might be used to increase the power of OMB over substantive policy. The Committee notes that there have been problems along that line in the past. It has been argued that the Federal Reports Act -- which S. 1411 amends --was used to interfere with regulatory policy under the guise of clearing information requests. Those arguments prompted Congress to remove the independent agencies from OMB supervision back in 1973 -- and place those agencies under GAO. The bill has provisions to guard against that. Section 3518(e) provides that the bill does not affect in any way the powers of the President or OMB respecting the substance of agency policies. Thus S. 1411 draws an important distinction between paperwork management and substantive decisions.112/

However, neither the statute nor the legislative history provides a bright-line test to identify when the denial of an information collection request will affect the ability of an agency to enforce its substantive mandate, and it is possible that it may not be feasible to design one to cover all situations. This appears to have been the conclusion of the Senate Governmental Affairs Committee when it admonished:

> The Congress itself has the responsibility and must ultimately ensure that the authority granted to the Director of OMB by this Act over both Executive branch and independent regulatory agencies and the override authority is not abused. As the history of the original Federal Reports Act demonstrates, the Congress always has the prerogative and capability to change those authorities. 113/

111/ S. Rep. No. 96-930, at 56.

112/ S. Rep. No. 96-930, at 56.

113/ S. Rep. No. 96-930, at 16.

d. Conclusion

Taken together, Executive Orders 12,291 and 12,498 provide the President, through OMB, with a formidable apparatus to significantly influence, if not effectively control, regulatory decisionmaking of covered agencies at all stages of the rule formulation and development process. E. O. 12,498 adds a particularly important new dimension to the review process. Absent the screening process afforded by 12,498, a proposed rule reached E. O. 12,291 review with relatively little difficulty and thereafter only needed to survive cost-benefit scrutiny to reach the public rulemaking stage of the process. The quasi-public nature of E. O. 12,291 review often facilitated the approval process, particularly with proposals that had generated a constituency both inside the proposing agency and in the general public. E. O. 12,498 allows OMB intervention at a much earlier stage and for the filtering out of agency activities that may lead to proposed rules under the broader standard of "consistency with the Administration's policies and priorities." Thus E. O. 12,498 significantly enhances the President's ability to control regulatory initiatives.

The powers granted under the Paperwork Act further buttress the President's regulatory management authority through its potential for control of the flow of information often necessary for effective regulation. Moreover, since both E. O. 12,498 and the Paperwork Act are administered by OIRA, it is more than likely that paperwork considerations are closely intertwined with concerns under the orders. Thus a regulatory activity that might lead to an information collection request is of course screenable under E.. O. 12,498. As a consequence, the public aspect of the OIRA paperwork review process may be avoided. 114/

3. The Impact of the Reagan Regulatory Review Program

Objective assessment of the Reagan Administration's regulatory review program is very difficult. OMB itself concedes that "there are no precise or agreed-upon measures of regulatory activity" and thus "we cannot measure exactly the effect that Executive Order No. 12,291 has had on regulatory activity." 115/ Nonetheless it has placed considerable weight on comparative quantifications of past and present numbers of pages in the Federal Register and numbers of proposed and final rules that have been so published. Thus since the promulgation of E. O. 12,291 in 1981, the number of pages of each year's Register has declined so that in 1984 it was 41.4 percent shorter than in

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114/ Under the Paperwork Act an agency must publish a notice in the Federal Register that it has submitted an information collection request to OMB. 44 U.S.C. 3507 (a)(2) (1982).

115/ OMB, Regulatory Program of the United States: April 1, 1985 - March 30, 1986 (August 8, 1985), at 581 (Regulatory Program).

1980. 116/ Between 1981 and 1984 the total number of proposed and final rule documents published declined by almost 35 percent. 117/ In contrast, during the Carter Administration the number of pages of the Federal Register increased by 52.5 percent between 1976 and 1980, while the total number of rule documents increased by 16.3 percent during that period. 118/

The decline in total number of pages and rule documents is commensurately reflected in OIRA review statistics. The total number of rules reviewed under E. O. 12,291 in 1984 declined 15.2 percent from 1983 and 24.9 percent from 1981. The number of proposed rules in 1984 declined 8.3 percent from 1983 and 1.7 percent from 1981. The number of final rules reviewed in 1984 declined 20.5 percent from 1983 and 36.5 percent from 1981. The number of major rules in 1984 decreased 1.6 percent from 1983 and 3.2 percent from 1981. 119/ The significant drop off of final rules may well indicate the intensity of review at the proposal stage. Some support for this observation may be gleaned from OIRA's statistics on the types of actions taken on rules. The percent of rules OIRA found consistent with the Executive Order and without need for any change has steadily declined from 87.3 percent in 1981 to 78.0 in 1984 and 71 percent in 1985. At the same time, the percent of rules found consistent after "minor" changes has steadily increased from 4.9 percent in 1981, to 15.2 percent in 1984, and 23 percent in 1985. Similarly, the percent of rules returned for reconsideration or that agencies withdrew rose from 1.8 and 1.6 percent respectively in 1981, to 2.7 and 2.5 percent in 1984, and 1.5 and 3.1 percent in 1985. 120/ Thus 29 percent of all proposals met some degree of OIRA resistance in 1985.

Some further indication of impact may be reflected in statistics showing the greatest declines in numbers of rules being sent over for review by certain agencies. The greatest percentage of declines occurred at the Environmental Protection Agency (-58.9%), the Department of Labor (-57.8%), and the Department of Energy (-52.8%). 121/ On the other hand, the agencies that showed the

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116/ *Id.*, at 581, 582.

117/ *Id.*, at 581, 583.

118/ *Id.*

119/ *Id.* at 571, 575.

120/ *Id.* at 575, 580; Testimony of OMB Director James C. Miller, III before the Subcommittee on Intergovernmental Affairs, Senate Committee on Governmental Affairs, January 28, 1986 (1985 statistics) (Miller Testimony).

121/ *Id.*

largest percent increase in rules between 1981 and 1984, the Department of Health and Human Services (69.2%), the Department of Housing and Urban Development (45.9%), and the Department of Education (35.1%), also showed a well above average percentage of rules approved with changes, withdrawn, and returned: HHS (17.2%, 1.5%, 6.6%), HUD (28.7%, 5.6%, 0.9%), and DOE (37.5%, 8.7%, 1.9%).122/

OMB has also developed a quantitative measure for its paperwork activities. In its annual reports on the Information Collection Budget, OMB estimates the number of "burden hours" that have been imposed from year to year. The measure of burden includes the time required to read, understand and fill out a form, and to develop, compile and review the information requested. 123/ OIRA reviews an average of 4,000 proposed information collections annually, many of which are recordkeeping or reporting requirements contained in or mandated by agency regulations. Since 1981, OIRA estimates that it has reduced the paperwork burden on the public by over 500,000,000 hours annually. From 1980 to 1983 that burden was reduced by 33 percent. In 1984 it was reduced by an additional 4.3 percent, or 67.7 million burden hours. 124/

OIRA estimates that more than half of all the Federal reporting burden of two billion hours are required by information collections contained in agency regulations or otherwise mandated by law, 125/ and that at least 85% of the paperwork burden is imposed for regulatory or compliance purposes. 126/ Between 1981 and December 31, 1985, OIRA reviewed some 20,600 proposed information collections, approving 18,700 and disapproving over 1800. This averages about 310 approvals and 30 disapprovals per month. The average disapproval rate for 1985 was 6.8%. 127/

Finally, the first annual Regulatory Program published pursuant to E. O. 12,498 is pointed to as both a major step in assisting agency heads in focusing on the priorities and goals of their agencies in a manner comparable to the budget process (and thereby imposing on them an added degree of accountability) and raising public awareness of

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122/ Id. Critics charge that social programs are the special target of the review program and use these figures to support that claim.

123/ OMB, Information Collection Budget of the United States Government, Fiscal Year 1985 (April 12, 1985), (ICB).

124/ Id., Miller Testimony, at 2-3. The estimated total of burden hours imposed by Federal agencies is almost two billion.

125/ ICB, Fiscal Year 1986, at 16.

126/ Miller Testimony, at 8.

127/ Id. at 7.

those choices and priorities at the earliest possible moment. 128/ The Regulatory Program does not catalogue proposed regulatory activities that have been rejected. Neither does it explain whether or how approved activities have been modified.

Critics of the Administration's review program discount OMB's statistical measures and its annual listings of approved regulatory activities as unreflective of the actual substantive effect that the program's retrenchment policies and practices have had on congressionally mandated programs and policies. Instead they focus on what they believe is a continually growing body of evidence of OMB's intrusion into and interference with agency regulatory activities that indicates a pervasive and persistent design to shift the locus of discretionary decisionmaking authority from the agencies designated by the Congress to OMB. In support of this charge, they cite a host of such instances gleaned from the public record of congressional investigations and court litigation. 129/ The Oversight and Investigations Subcommittee of the House Energy and Commerce Committee recently summarized the issues raised by those proceedings as follows:

128/ Regulatory Program, at xi-xiv; Miller Testimony at 34-35.

129/ See, e.g.:

Role of OMB in Regulation, Hearing Before the Subcomm. on Oversight and Investigation of the House Comm. on Energy and Commerce, 97th Cong., 1st Sess. (1981).

Office of Management Budget Control of OSHA Rulemaking, Hearing Before a Subcomm. of the House Comm. on Government Operations, 97th Cong., 2d Sess. (1982).

Infant Formula: The Present Danger, Hearing Before the Subcomm. on Oversight and Investigations of the House Comm. on Energy and Commerce, 97th Cong., 2d Sess. (1982).

Office of Management and Budget Control of OSHA Rulemaking, Hearings Before a Subcomm. of the House Comm. of Government Operations, 97th Cong., 2d Sess. (1982).

EPA: Investigation of Superfund and Agency Abuses (Part 3), Hearings Before the Subcomm. on Oversight and Investigations of the House Comm. on Energy and Commerce, 98th Cong., 1st Sess. 81 (1983).

Investigation of the EPA: Report on the President's Claim of Executive Privilege Over EPA Documents, Abuses in the Superfund Program, and Other Matters by the Subcomm. on Oversight and Investigations of the House Comm. on Energy and Commerce, 98th Cong., 2d Sess. 285 (1984).

EPA's Asbestos Regulations: Hearing Before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, 99th Congress, 1st Session 109 (1985), Serial No. 99-2. (Asbestos Hearings).

Public Citizen Health Research Group et al. v. Rowland, Nos. 84-1252, 84-1392, 85-1014 (D.C. Cir., filed Mar. 4, 1985).

Environmental Defense Fund v. Thomas, Civil Action No. 85-7747 (D.D.C., January 23, 1986) (Flannery, J.).

> ...Congressional investigations and court litigation have brought to light instances of arbitrary delays in the OMB review process forcing violations of statutorily-prescribed or court-ordered deadlines; the modification or complete displacement of technical, scientific, and policy judgments of agency officials as a result of OMB pressure; OMB imposition of cost-benefit criteria in agency rulemakings in contravention of specific congressional mandates; OMB substitution of political considerations for the economic analyses required by the Order; secret meetings between OMB officials and affected industry representatives; OMB transmission of industry views to agency decisionmakers without identification; and failure to record OMB input in the public docket of an agency rulemaking.130/

Critics of regulatory review point to the example of OMB's involvement with EPA's development of asbestos regulations as a paradigm case study of the process going awry and cite facts found at a hearing before the House Energy and Commerce Subcommittee. 131/ EPA's efforts to control asbestos began soon after the Toxic Substances Control Act was enacted in 1976. Asbestos was one of the first chemical substances investigated by EPA's Office of Pesticides and Toxic substances, and in October 1979, the agency announced that it was contemplating the use of the broad authority available under TSCA require the asbestos industry to submit information on asbestos use, exposure, and health effects. Throughout 1983 EPA worked on finalizing its regulatory strategy and in 1984 it completed two proposed regulations to control asbestos: one to ban four specific product categories and the second to impose a steadily declining limit on asbestos mining and importation. These regulations under TSCA were based on the fundamental premise that the authorities of other Federal agencies could not prevent or reduce to a sufficient extent the unreasonable risks from asbestos and thereby could not adequately protect the public health. In May and August, 1984, after five years of policy analysis and regulatory development, these two proposals were submitted to OMB for review pursuant to Executive Order 12,291.

On February 1, 1985, EPA, through its Acting Deputy Administrator, suddenly announced that it was withdrawing from OMB 12,291 review its proposed rules concerning the banning and phasedown

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130/ EPA's Asbestos Regulations: Report On A Case Study On OMB Interference in Agency Rulemaking by the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, 99th Congress, 1st Session 109 (1985), (Comm. Print #99-V).

131/ The following is a summary of the hearing record in the Asbestos Hearings, *supra*, note 129.

of the use of asbestos on the ground that it was legally required to refer regulatory action in this area to the Occupational Safety and Health Administration (OSHA) and the Consumer Product Safety Commission (CPSC) pursuant to Section 9 of the TSCA. As has been indicated, the efficacy of such a referral had been a matter of agency deliberation since 1979 and that prior to the February 1 announcement by EPA's Acting Deputy Administrator, agency officials had consistently determined that OSHA and CPSC could not reduce asbestos risks to a sufficient extent and that EPA action under TSCA was necessary to reduce such risks. These included four major policy statements issued in 1984, including one which was approved by the Acting Deputy Administrator when he was General Counsel of the agency.

The Subcommittee inquiry revealed that during the review process OMB raised a series of objections which impeded release of the rules for public comment. The source of most, if not all, of the objections was traced to industry sources which had made contacts with OMB officials. In all, over twenty such communications took place between industry representatives and other private parties during the one-year period prior to the announcement of EPA's referral policy reversal. None of the contacts were revealed to EPA, the Congress, or the public at the time they were occurring.

Moreover, docketing of ex parte contacts between EPA and OMB during the period of OMB's review of the proposed asbestos regulations was virtually non-existent. The Subcommittee's inquiry disclosed that EPA and OMB officials engaged in more than 30 telephone calls and meetings following the submission of EPA's ban and phasedown rules under Executive Order 12,291. Many of these conversations involved extremely important matters of agency policy, such as the interpretation of Section 9 of TSCA and the issue of discounting human lives. Only one of the 30 ex parte contacts was ever docketed.

In addition to raising the Section 9 referral issue during the review period, OMB urged that EPA had incorrectly assessed the value of the benefits of the proposed rules because it had not discounted the health benefits (cancer deaths avoided) over the latency period (30-40 years) for asbestos-related cancer. EPA strongly objected to the adoption of the discounting of lives approach in the context of the asbestos rulemakings. EPA officials noted that "this methodology would have the effect of greatly reducing benefit and therefore make the regulations appear less cost effective," and represented a major departure from the EPA's previous analyses. By February 1, this issue was at an impasse between OMB and EPA.

The Section 9 referral issue emerged only after it became apparent that EPA planned to resist OMB's discounting methodology in December 1984. At that time OMB officials hinted that there might be a Section 9 problem. On December 27, 1984 the Acting Deputy Administrator was shown an OMB briefing memo which concluded that Section 9 required EPA to refer asbestos risks to OSHA and CPSC. The hearing record reveals that the OMB legal memorandum was the only analysis reviewed by the Acting Deputy Administrator which supported his referral announcement. That memo was never shown to any other EPA official prior to the February 1 announcement and was not placed in the public record until April 12, 1985. All previous EPA legal policy analyses had concluded that the authority of OSHA and CPSC was inadequate to reduce the risks of asbestos. Even a subsequent legal memo by the EPA General Counsel issued on January 31, 1985 did not come to the conclusion that Section 9 mandated referral. The OMB legal memo reviewed by the Acting Deputy Administrator was therefore the only operative document supporting EPA's abrupt reversal of policy on February 1.

The element of OMB induced delay was the sole issue in a recent United States District Court decision involving the EPA. In Environmental Defense Fund v. Thomas 132/ it was alleged that OMB utilized the E. O. 12,291 review process to unlawfully delay beyond a statutorily mandated deadline EPA's promulgation of permitting standards for underground hazardous waste storage tanks that cannot be entered for inspection. Plaintiffs sought an order directing agency promulgation by a date certain and an injunction against OMB to prevent similar interference in the future. The court found that OMB caused the delay. It commented that "the use of E. O. 12,291 to create delays and impose substantive changes raises some constitutional concerns" 133/ and that [u]nder E. O. 12,291, if used improperly, OMB could withhold approval until the acceptance of certain content in the promulgation of any new EPA regulation, thereby encroaching upon the independence and expertise of EPA.... This is incompatible with the will of Congress and cannot be sustained as a valid exercise of the President's Article II powers." 134/ The court did not, however, reach the constitutional issue, nor did it find it necessary to enjoin OMB from any further involvement in the proceeding. But it did declare "that further review by OMB which creates any delay in meeting the June 30, 1986 deadline is unreasonable and unacceptable." 135/ The court noted that pre-trial discovery had revealed that of 169 rules submitted to OMB for E. O. 12,291 review which were subject to statutory deadlines, OMB extended its review beyond the time limits on 76 occasions. The average delay per regulation at OMB was found to be 91 days. Total delays were more than 311 weeks. The court remarked that "[a]pparently section 8(a)(2) of E. O. 12,291 is simply ignored" and concluded:

132/ Civil Action No. 85-1747 (D.D.C. January 23, 1986) (per Flannery, J.).

133/ Slip op. at 9.

134/ Id., at 9-10.

135/ Id., at 11.

> This court declares that OMB has no authority to use its regulatory review under E. O. 12,291 to delay promulgation of EPA regulations arising from the 1984 Amendments of the RCRA beyond the date of a statutory deadline. Thus, if a deadline already has expired, OMB has no authority to delay regulations subject to the deadline in order to review them under the executive order. If the deadline is about to expire, OMB may review the regulations only until the time at which OMB review will result in the deadline being missed. From its tracking system, EPA can determine when further delay due to OMB review will result in a deadline being missed. 136/

Another case, recently argued before the United States Court of Appeals for the District of Columbia, exemplifies the interference/displacement issue and for the first time directly raises the question of the constitutionality of E. O. 12,291. Public Citizen Health Research Group v. Rowland 137/ involves an Occupational Safety and Health Administration (OSHA) rulemaking concerning ethylene oxide (EtO). EtO is one of the most widely produced chemicals in the United States. One of its significant uses is as an anti-microbial sterilant and is deemed critical in health care, diagnostic, and treatment facilities, as well as in medical product manufacturing. Scientific testing has established that inhalation of EtO poses a potential cancer risk to workers in the form of cancers of the blood as well as cancers in other organs, mutations, and increased rate of chromosomal alterations, and spontaneous abortions. Over 80,000 hospital workers, medical device makers, and producers of chemicals are regularly exposed to EtO annually.

Evidence of carcinogenicity and mutagenicity surfaced in the late 1970's and early 1980's and, in January 1982, OSHA began rulemaking proceedings for a protective standard. On March 15, 1983, the Court of Appeals for the District of Columbia directed OSHA to issue a proposed EtO rule within 30 days and to issue a final rule within one year. To avoid further litigation, OSHA and the litigants entered into a stipulation that OSHA would complete its rulemaking responsibilities by June 15, 1984, which was approved by the court.

The final version of the standard was completed and signed off by the Secretary of Labor on June 14, 1984. It contained provisions and scientific justifications for both a permissible exposure level (PEL) and a short term exposure level (STEL). These limits address

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136/ Id., at 12, 13. Section 8(a)(2) states that the procedures of the Order shall not apply where there are statutory deadlines. See also, NRDC v. Gorsuch, 14 ELR 20817 (D.D.C. 1984) ("OMB review is not only unnecessary, but in contravention to applicable law...OMB review can,..., be eliminated entirely.").

137/ Nos. 84-1252, 84-1392, 85-1014 (D.C. Cir. filed Mar. 4, 1985).

different concerns. A PEL sets a limit on the cumulative exposures an employee may receive in one day. Thus, in brief, high level exposures are not regulated by PEL. In contrast, a STEL is designed to protect employees from short duration, high exposures. The Preamble justified the STEL on three grounds: (1) the PEL would not, in itself, reduce the cancer risk posed by EtO to acceptable limits; (2) the STEL was the only effective way to protect against the demonstrated risk of serious chromosome damage posed by EtO; and (3) a STEL was needed to reduce the risk of spontaneous abortions.

The June 14 document was sent to OMB for E. O. 12,291 review. That same day OMB wrote the Solicitor of the Department of Labor raising several objections to the proposed rule as "being inconsistent with the policies of E. O. 12,291." Most of the objections were directed at the STEL, arguing that it was not justified on cost-benefit grounds, that the STEL embodied an improper and needlessly expensive preference for engineering controls as opposed to respirators, that the STEL was not adequately supported by health effects data, and that OSHA failed to qualify the risks that were to be addressed by the STEL.

In response, and in the face of its own contrary findings, OSHA deleted the STEL provision and all references to it from the final standard, and excised from the Preamble all the scientific material that supported the need for a STEL. OSHA has acknowledged that its decision was based "largely in response to reservations expressed" by OMB. The OSHA decision to drop the STEL provision was so sudden that there was not adequate time to produce a clean copy of the final standard, so that the copy submitted to the Federal Register on June 15 is the June 14th document, with the deletions simply blacked out. OSHA held subsequent hearings on the need for a STEL in which it received the unanimous recommendation of its scientific staff, and the recommendations of the National Institute for Occupational Health and Safety (NIOSH) and the National Institute of Environmental Health Sciences (NIEHS), that a STEL should be adopted. No new studies or evidence bearing on the STEL were introduced. OSHA, however, concluded in December, 1984, that it would "go along with OMB's reservations and not promulgate a STEL."

On March 4, 1985 a suit was filed challenging the adequacy of the EtO standard and the legality of OMB's role in the deletion of the STEL from the standard. An amicus brief on behalf of five House Committee Chairmen supporting the challenge was filed on June 28, 1985. Oral argument was held on January 22, 1986. 138/

138/ See Petitioners' brief, Public Citizen Health Research Group v. Rowland, Nos. 84-1252 and 1014, D.C. Cir., filed March 4, 1984; amicus brief of Chairmen Dingell, Rodino, Brooks, Hawkins, and Ford, id., filed June 28, 1985.

Critics also point to OMB's Paperwork Act scrutiny as another source of effective intervention in substantive agency operations. Although no court litigation has been filed and no major revelations have surfaced in any congressional hearings, some questions have been raised with respect to certain information collection request denials. 139/ In response to concerns over OMB implementation of the Act, a private nonprofit organization now publishes a monthly report on OIRA approvals and denials. 140/ The report provides cumulative summaries of OMB actions with respect to all agencies that have made submissions, and highlights significant monthly actions.

As indicated at the outset, objective assessment, in the sense that some particular instance or facts or cumulation of either or both, can be pointed to as indicating definitive approbation or condemnation of the regulatory review program, would not appear possible. But even the most ardent opponents of the program concede the need for more effective government regulatory management practices. On the other hand, it would be difficult to sustain an argument that all the verifiable "horror stories" are simply the products of administrative foul-ups and misunderstandings. It may be that the publicized instances of OMB interference is not the tip of an iceberg, but in a legal sense it appears that the critics of the program have made at least a "prima facie case" that invites continuing vigilant oversight as well as serious consideration of the constitutional and systemic fairness issues that may be implicated. It also encourages exploration of the possibilities for remedial measures by either the Congress or the Executive which would avoid a judicial resolution of the separation of powers issues. With this in mind, we turn to an examination of the legal considerations that have been raised by the executive order program.

4. The Legal Dispute: The Constitutional Role of the President in Controlling Administrative Lawmaking

If the fact of OMB displacement of agency authority, secret processes, and special access for favored interests is as widespread and endemic as is claimed, a number of serious issues are raised. First, the displacement problem implicates separation of powers concerns. In light of Congress' consistent refusal to grant statutory authority for presidential control of rulemaking, the following questions arise: Where does the President derive his authority to establish and implement the present executive order program? How far does that authority extend? Until what point in the process, if any, can the Executive preclude congressional inquiry? Second, in light of

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139/ See, *e.g.*, "HUD, VA Ordered to Stop Gathering Racial Ethnic Data on Housing," Wash. Post, March 23, 1985, at D11-D12; "OMB Effort to Curb Data Disputed," Wash. Post, May 14, 1985, at A17.

140/ "Eye on Paperwork: OMB Control of Government Information," published by OMB Watch, Washington, D.C.

the secret processes involved, how is Congress to carry out its constitutional function of ensuring that its mandates are being faithfully fulfilled? This is the other side of the separation of powers problem. When Congress delegates a discretionary duty expressly to an agency official, what role can the President's agents play in that official's decisionmaking scheme? Can Congress still insulate certain agency officials from presidential interference through the vehicle of independent regulatory agencies?

Third, assuming the efficacy of presidential guidance and coordination of administrative lawmaking, what safeguards are necessary to ensure the fairness and integrity of the decisionmaking process. Here are raised concerns over so-called conduit and ex parte contacts by and through OMB. How much sunshine, through logging and disclosure requirements for oral and written communications between private parties and OMB, and between OMB and the agencies, is too much so that it injures the deliberative process? In balance here are the effective and efficient functioning of executive decisionmaking versus the currently accepted values of meaningful public participation in agency decisionmaking and effective judicial review of that process.

This section will explore the contending positions with respect to the separation of powers issues. The paper will conclude with a review of possible remedial alternatives.

a. The Case for Presidential Control

Executive Orders 12,291 and 12,498 do not draw their authority from any specific constitutional provision or congressional enactment. The Orders' preambles refer only to "the authority vested in...[the] President by the Constitution and laws of the United States of America." Proponents of the order system contend that the legal basis for presidential oversight and management of the rulemaking process is well founded in article II of the Constitution.

Article II of the Constitution reposes all executive power in a single Chief Executive, 141/ and charges him to "take Care that the Laws be faithfully executed." 142/ Proponents argue that it is not open to serious question that article II authorizes the President to manage administrative rulemaking through executive orders. On its face, article II sets out a potentially formidable scheme for executive control of administration. By vesting the entire "executive Power" in the one federal officer with a national constituency, the framers accommodated the twin notions of accountability and efficiency. The sparse but important provisions that follow develop lines of authority reflecting the competing claims of administrative necessity and the separation of powers. The President can appoint

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141/ U.S. Constitution art. II, sec. 1.

142/ U.S. Constitution. art. II, sec. 3.

executive officers and require them to report to him so that he can determine whether the laws are being "faithfully executed." This ability to require reports necessarily implies the right to confer with those officers. The President in turn must periodically report to Congress concerning the progress of the administrative operation and may suggest further legislative action. Thus, this scheme implies operational oversight and management of the administrative process, if not some degree of substantive control, and suggests a line of authority that runs from Congress to the President rather than from Congress to subordinate executive officers.

This reading of article II authority was adopted in Sierra Club v. Costle [143] in the relevant context of a contested informal rulemaking proceeding. There the validity of the rulemaking was challenged on the ground, inter alia, of improper presidential intercession after the close of the public comment period. In rejecting the contention, the Court of Appeals for the District of Columbia emphatically adopted the broadest view of executive power:

> The court recognizes the basic need of the President and his White House staff to monitor the consistency to executive agency regulations with Administration policy. He and his White House advisers surely must be briefed fully and frequently about rules in the making, and their contributions to policymaking considered. The executive power under our Constitution, after all, is not shared -- it rests exclusively with the President. The idea of a "plural executive," or a President with a council of state, was considered and rejected by the Constitutional Convention. Instead, the Founders chose to risk the potential for tyranny inherent in placing power in one person, in order to gain the advantages of accountability fixed on a single source. To ensure the President's control and supervision over the Executive Branch, the Constitution -- and its judicial gloss -- vests him with the powers of appointment and removal, the power to demand written opinions from executive officers, and the right to invoke executive privilege to protect consultative privacy. In the particular case of EPA, Presidential authority is clear since it has never been considered an "independent agency," but always part of the Executive Branch.
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> The authority of the President to control and supervise executive policymaking is derived from the Constitution; the desirability of such control is demonstrable from the practical realities of administrative rulemaking. Regulations such as those involved here demand a careful weighing of cost, environmental, and energy considerations. They also have broad implications for national economic

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[143] 657 F. 2d 298 (D.C. Cir. 1981). The case did not involve E. O. 12,291 and arose prior to its promulgation.

> policy. Our form of government simply could not function effectively or rationally if key executive policymakers were isolated from each other and from the Chief Executive. Single mission agencies do not always have the answers to complex regulatory problems. An overworked administrator exposed on a 24-hour basis to a dedicated but zealous staff needs to know the arguments and ideas of policymakers in other agencies as well as the White House.144/

Presidential authority to invoke the order system is also supported by a provocative view of the separation of powers doctrine propounded by Professor Peter L. Strauss. 145/ Strauss argues that a formalistic approach to separation of powers questions, as exemplified by the Supreme Court's opinion in INS v. Chadha, 146/ highlights a common misconception over the meaning and scope of the doctrine. In Strauss' view we must abandon the notion espoused by the Court in the legislative veto case that the Constitution established a division of three branches, each vested with a discrete portion of governmental power and no other. Rather it must be understood that the Framers established three constitutional divisions: the President, the Congress, and the Judiciary. It did not talk about the executive, the legislative and judicial branches; nor did it create the infrastructure of government; it left that task to Congress. What the Framers were concerned about is the maintenance of a balance of political power between the President and Congress; that is what the separation of powers is all about. The Framers were also concerned about the means of control to be afforded the branches over the agencies of government; this is what the checks and balances limitations are meant to facilitate. Checks and balances, according to Strauss, are to be evaluated in accordance with the effect a change in the nature and degree of control one branch has over the agencies will have on the relative balance between Congress and the President.

Critical to Strauss' theory is his view of the President's relation to the agencies. The Framers envisioned the President, he argues, as a unitary figure at the head of all executive activity and politically accountable for it. In this regard he explains:

> Central to the overall judgments of the Constitution, and reflected in these textual passages, is the elementary judgment that we are to have a unitary, politically responsible head of government, possessed of sufficient independent authority to serve as an enduring counterweight to the political muscle of

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144/ 657 F. 2d at 405-406.

145/ Strauss, The Place of Agencies in Government: Separation of Powers and the Fourth Branch of Government, 84 Colum. L. Rev. 573 (1984) (Strauss).

146/ 462 U.S. 919 (1983).

> Congress. Arrangements distinctive of such a role -- whether creating a "multiple executive," defeating the possibility of presidential political responsibility for the work of government, or threatening the President's continuing capacity to resist Congress — are for this reason suspect. 147/

From this construct Strauss argues that Congress is required to "observe a principle of parity in its treatment of the possibility of political control of agency action by itself and by the President." 148/ Strauss believes this establishes a structural imperative that implies "the need for a substantial presidential relationship with any agency performing a significant governmental duty exercised pursuant to public law." 149/ Under Strauss' theory, after Congress creates agencies and empowers them to act, it must keep hands off. This would mean, for example, independent regulatory agencies, such as the Federal Trade Commission or the Securities Exchange Commission could be made subject to regulatory review. 150/

Finally, it is argued that, in any event, the orders explicitly disclaim any authority to displace discretionary decisionmaking or to

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147/ Strauss, *supra*, note 145, at 641.

148/ *Id.* at 650.

149/ *Id.* at 641.

150/ Professor Strauss has taken just this position in a report to the American Bar Association Section on Administrative Law which has adopted the thesis and sent it to the ABA House of Delegates for approval. A vote is expected in February 1986. The notion of a constitutionally required exclusive line authority from agency officials, including members of so-called independent regulatory commissions, to the President, rather than from Congress to the agency heads, is a very live issue. In *Synar* v. *United States et al.*, Civil Action Nos. 85-3945, 85-4106 (D.D.C., Feb. 7, 1986)(3-judge court), the court ruled that the powers conferred upon the Comptroller General as part of the Gramm-Rudman-Hollings automatic budget reduction process are executive powers which cannot constitutionally be exercised by an officer removable by Congress, thus rendering that process inoperative. The court cited Strauss' theory approvingly. *Slip Opinion*, at 41. The same issue is currently pending decision before the Third Circuit in *Ameron, Inc., et al.* v. *U.S. Corps of Engineers*, Nos. 85-5226 and 85-5377 (3rd Cir.) (challenging role of Comptroller General in Competition in Contracting Act). See also *FTC* v. *American National Cellular, Inc.*, Civ. No. 85-7375 WJR (PX)(C.D.Calif. 1985)(challenging FTC's authority to institute prosecutorial actions because FTC commissioners are not removable at the will of the President); and *Ticor Title Ins. Co.* v *FTC*, C.A. No. 35-3089 (D.D.C., Jan. 2, 1986)(same contention; dismissed as not ripe).

override any provision of law, and that the transmission of views and suggestions to agency officials would be an unconstitutional interference with the Executive's ability to communicate and consult with his subordinates. 151/

b. The Case Against Presidential Control

The emergent pattern of OMB intervention in agency rulemaking under the purported authority of Executive Orders 12,291 and 12,498 is argued to violate congressional intent in three ways: it effectively displaces those agency officials Congress has explicitly designated as administrative decisionmakers; it prevents meaningful public participation in and effective judicial review of the rulemaking process as prescribed by the Administrative Procedure Act and other statutes; and it causes the application of statutorily impermissible substantive criteria. Such interference with a proper exercise of congressionally delegated rulemaking authority cannot be justified as a valid application of executive power under article II of the Constitution. It is instead a usurpation of Congress' legislative prerogatives.

It is indisputably true that the President "may require the opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices." 152/ The President, relying on his constitutional obligation to "take Care that the Laws be faithfully executed" 153/ also has the power to remove a subordinate officer, even if that officer enjoys certain rulemaking authority delegated by Congress. 154/ And, in fulfilling his duties under the "take Care" clause, the President may "supervise and guide" subordinate officers' "construction of the statutes under which they act in order to secure...uniform and unitary execution of the laws." 155/ As the District of Columbia Circuit Court summarized in Sierra Club v. Costle: "To ensure the President's control and supervision over the Executive Branch, the Constitution -- and its judicial gloss -- vests him with the powers of appointment and removal, the power to demand written opinions from executive officers, and the right to invoke executive privilege to protect consultative privacy." 156/

151/ U.S. v. Nixon, 418 U.S. 683 (1974); Myers v. United States, 272 U.S. 52 (1926).

152/ U.S. Const., art.II, sec. 2, cl. 1.

153/ U.S. Const., art. II, sec. 3.

154/ See Myers v. U.S., 272 U.S. 52 (1926).

155/ Id., at 135.

156/ 657 F. 2d 298, 405 (D.C. Cir. 1981).

But it is well understood that, notwithstanding their experience under the Articles of Confederation, the Framers did not intend the presidency to be an institutional competitor to the Congress. Nor did they conceive of the President as an administrative manager with a general power to control the acts of executive officers. The prevailing view was that the Framers intended the constitutional role of the Chief Executive, at least in domestic affairs, to be ancillary to that of the legislature. The President was conceived to be a managerial agent for the legislature rather than an independent source of domestic policy. 157/ Indeed, this conception of the President as a managerial agent for the Congress is reflected in the statutes initially establishing the executive departments and agencies, 158/ and in the administrative practices of the agencies of the national government until well into the twentieth century. 159/ As late as 1927 a leading commentator on administrative law and practice would analogize the relation of the President and Congress as that of a general manager and a board of directors and describe their respective relations to the heads of agencies as follows:

> It has been pointed out that constitutionally, that is, as the result of direct constitutional grant, the President of the United States possesses no administrative authority. From the purely constitutional standpoint he, thus, is not head of the administration. Even the heads of the great executive departments constituting his cabinet are not his subordinates in the sense that he has legal authority to give them orders in respect to the performance of their duties. From the legal standpoint his authority in respect to them is executive in that it consists merely of his right to take such steps as may be necessary to see that such orders as are given to them by law are duly enforced. Substantially the same condition exists in the individual status and powers of the governors. To state this condition in another way, the line of authority in both the national and state governments runs directly from the administrative services to the

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157/ *See*, 3 W. W. Willoughby, *The Constitutional Law of the United States*, 1479-80 (2d ed. 1929); F. Goodnow, Comparative Administrative Law 51-54 (1893); Corwin, The Steel Seizure Case: A Judicial Brick Without Straw, 53 *Colum. L. Rev.* 53 (1953); Jaffee, Invective and Investigation in Administrative Law, 52 *Harv. L. Rev.* 1201, 1203, 1238 (1939); Karl, Executive Reorganization and Presidential Power, 1977 *Sup. Ct. Rev.* 1, 10-11; Zamir, Administrative Control of Administrative Action, 57 *Calif. L. Rev.* 866, 869-70 (1969).

158/ See, e.g., Act of Sept. 2, 1789, ch. 12, sec., 1 Stat. 65, 66. (Treasury Department).

159/ L. White, *The Jacksonians* 78 (1959); L. White, *The Federalists* 326 (1948); W. W. Willoughby, *supra* note 157, at 1480.

> legislature, except where the latter has expressly provided otherwise. 160/

In sum, it is contended that the article II vesting of "executive power" in the President may locate the situs of power but it does not define its content; the "take Care" clause does not say that the President will execute the laws; and the ability to require reports from department heads on their activities does not naturally lead to an inference of power to direct the activities of those who report. The ultimate power to define and direct the action of executive officers rests with the Congress.

In any event, no court has ever held that the President may go further and "ensure [his] control and supervision over the Executive Branch" by dictating the outcome of a rulemaking process to the agency charged by Congress with administrative discretion. The President's authority over subordinate executive officials is not absolute and does not extend to usurping the legislative power invested in Congress by article I of the Constitution and delegated by Congress to a specified agency. As noted by Chief Justice -- and former President -- Taft, writing for the Court in Myers: "Laws are often passed with specific provision for the adoption of regulations by a department or bureau head to make the law workable or effective." 161/ Notwithstanding the President's authority to guide and supervise subordinates, "there may be duties so peculiarly and specifically committed to the discretion of a particular officer as to raise a question whether the President may override or revise the officer's interpretation of his statutory duty in a particular instance." 162/

Chief Justice Taft's conclusion that, although the President may remove executive officers if he is dissatisfied with their performance, he may not interfere with their execution of their duties, is consistent with a long line of legal authority dating back to the early days of our Republic. For example, in Kendall v. United States, 163/ the Supreme Court considered the issue of presidential authority to direct a subordinate officer's performance of ministerial duties delegated by Congress. The Court rejected the contention that

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160/ W. W. Willoughby, Principles of Public Administration, 36-37 (1927).

161/ 272 U.S. at 135.

162/ Id. Accord, United States ex rel. Accardi v. Shaughnessy, 374 U.S. 260, 267-68 (1954) ("[i]f the word 'discretion' means anything in a statutory or administrative grant of power, it means that the recipient must exercise his authority according to his own understanding and conscience.").

163/ 37 U.S. (12 Pet.) 524 (1838).

the "take Care" clause authorized Presidential involvement in the tasks at issue:

> It was urged at the bar, that the postmaster general was alone subject to the direction and control of the President, with respect to the execution of the duty imposed upon him by this law, and this right of the President is claimed, as growing out of the obligation imposed upon him by the constitution, to take care that the laws be faithfully executed. This is a doctrine that cannot receive the sanction of this court. It would be vesting in the President a dispensing power, which has no countenance for its support in any part of the constitution; and is asserting a principle, which, if carried out in its results, to all cases falling within it, would be clothing the President with a power entirely to control the legislation of Congress, and paralyze the administration of justice." To contend that the obligation imposed on the President to see the laws faithfully executed, implies a power to forbid their execution, is a novel construction of the constitution, and entirely inadmissible. 164/

In short, it is asserted, where a valid duty is imposed upon an executive officer by Congress, "the duty and responsibility grow out of and are subject to the control of the law, and not to the direction of the President." *Id.* at 610. The present Administration has acknowledged as much. In its 1981 memorandum justifying Executive Order 12,291, the Justice Department acknowledged this limitation on Presidential authority: "[I]t is clear that the President's exercise of supervisory powers must conform to legislation enacted by Congress. In issuing directives to govern the Executive Branch, the President may not, as a general proposition, require or permit agencies to transgress boundaries set by Congress." 165/

Finally, opponents note, prior to 1981 rulemaking in the federal government was an essentially decentralized, agency oriented process. Historically, the vast bulk of delegations of administrative lawmaking authority have been to governmental agencies, not the President, with final discretion as to the shape such rules shall take vested in the

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164/ *Id.*, at 612-13. See also, *Gilchrist* v. *Collector of Charleston*, 10 Fed. Cas. 355-66 (1810) (customs collectors should be guided by terms of Embargo Act and not limited in discretion by contrary presidential instructions).

165/ Memorandum of February 13, 1981, *reprinted in* Role of OMB in Regulation: Hearing Before the Subcomm. on Oversight and Investigations of the House Comm. on Energy and Commerce, 97th Cong., 1st Sess. 488 (1981) at 488 (citing *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952)) (footnote omitted).

heads of the agencies. The Administrative Procedure Act (APA), 166/ which details the manner in which rules are to be promulgated, focuses exclusively on agency rulemaking procedures and appears to contemplate no formal role for the President. Indeed, during the legislative development of the APA, Congress rejected a proposal for a central oversight body to monitor and coordinate agency performance. 167/

In sum, critics assert, nothing in the scheme of the Constitution or statutes passed by the Congress mandates or recognizes a determinative role for OMB in the administrative rulemaking process. Nevertheless, since the promulgation of E. O. 12,291, and as now buttressed by E. O. 12,498, OMB relentlessly pursues such a role. Utilizing those Orders in conjunction with its formidable powers over money, personnel, information gathering, and official communications with Congress, OMB has insinuated itself into the institutional decisionmaking processes of all executive agencies so that, for all intents and purposes, its will is a determinative factor in agency rulemaking decisions. Under these circumstances, opponents believe

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166/ 5 U.S.C. 551 et seq. (1982).

167/ The 1941 Report of the Attorney General's Committee on Administrative Procedure (Final Report), the source of many of the APA's provisions, recommended the creation of an Office of Federal Administrative Procedure. Sitting atop the bureaucratic structure, this superagency was "to study and coordinate administrative procedures, and in general through continuing studies and periodical recommendations, to achieve and stimulate practical improvements in a manner not possible through omnibus legislation." Final Report, at 6. Although the Office apparently would have had no power to promulgate and enforce a uniform methodology by which agencies would review proposed rules, the Final Report contemplated that the Office could be authorized to oversee the entire decisionmaking process and to require additional procedures where necessary. The proposal for an Office with such central oversight power was rejected in the Senate, apparently because of fear that "such an office...will be political, will interfere with the independent operation of boards and commissions, [and] will constitute a superadministrative agency." Staff of Senate Committee Judiciary, 79th Congress, 1st Sess., Report on the Administrative Procedure Act (Comm. Print 1945), reprinted in Senate Comm. on the Judiciary, 79th Cong., 1st Sess., Administrative Procedure Act: Legislative History (1946).

the order system is unconstitutional. 168/

5. Accommodating Control, Efficiency, and Systemic Fairness: The Search for Remedial Alternatives

Perhaps the most persistently and urgently voiced concern for critics has been over the potentiality for secrecy and unfairness in executive order system. 169/ The order system, it is claimed, opens the way for secret processes and special preferential access that undermines the integrity of the governmental decisionmaking process. It also runs counter to the movement of the last decade in the courts and Congress to provide full and meaningful public participation in agency regulatory decisionmaking. 170/ Finally, the concealed OMB practices are seen as undermining the ability of the courts to engage in effective judicial review. Thus the general agreement on the essentiality of supervision and coordination of regulatory decisionmaking by executive agencies has been tempered by the disquiet that has been aroused by the manner in which such supervision has thus far been conducted. The range and nature of the remedial proposals proffered thus far of course reflect both political predispositions and the degree of unease over the present system. But they provide a useful catalogue from which an accommodation may be shaped.

a. Elimination of OMB's Review Role

A frequently voiced suggestion is that Congress should prohibit any OMB role in the regulatory review process. 171/ Presumably this

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168/ The foregoing arguments were recently presented to the D.C. Court of Appeals in Public Citizen Health Research Group v. Rowland, discussed supra pp. 33-35, the first case to directly raise the constitutional issue. Only one decided case has dealt with OBM's implementation of E.O. 12,291. In Environmental Defense Fund v. Thomas, Civil Action No. 85-1747 (D.D.C. Jan. 23, 1986)(Flannery, J.), the court held that OMB had used the Order to unlawfully delay the promulgation of rules beyond a statutorily mandated deadline. See discussion, supra at pp. 32-33. Other cases have indirectly alluded to the Order's effects. See, Silverglade, Judicial Control of Regulatory Action Based on Cost-Benefit Analysis, 36 Ad. L. Rev. 387 (1984), and cases discussed therein.

169/ See, Presidential Control, supra note 65 at 54; Olson, The Quiet Shift of Power, Office of Management and Budget Supervision of Environmental Protection Agency Rulemaking Under Executive Order 12,291, 4 Va. J. Nat. Res. L. 1 (1984); OMB Watch, OMB Control of Rulemaking: The End of Public Access (August 1985).

170/ See, supra, pp. 6-11.

171/ "Dingell Considering Proposal to Ban OMB Review Powers Under E. O. 12,291 & 12,498," Inside the Administration, Feb. 6, 1986, at 1.

would allow return to the type of decentralized supervision characterized by President Carter's E. O. 12,044 172/ and would perhaps signal a congressional intention to engage in more intense oversight. It is likely, however, that such a blanket prohibition would arouse objection from the Executive that this would be an unconstitutional interference of executive prerogatives vis-a-vis the bureaucracy.

b. Selective Exemptions

This would allow Congress to selectively protect particular programs or agencies from executive order review. Such an *ad hoc* approach would not appear conducive to any overall coordination approach and might tend to "balkanize" such efforts as agencies and their constituencies seek individual exemptions. See, *e.g.*, Pub. L. 99-190, exempting agricultural marketing orders from E. O. 12,291 review.

c. Sunshine Provisions

So-called sunshine provisions are designed to force disclosure of inputs to the regulatory decisionmaking process to afford the maximum opportunity for meaningful public participation and effective judicial review. The debate over such proposals centers on their scope and how compliance can be effectively monitored. The most comprehensive current legislative proposal is the recently introduced S. 2023, 173/ sponsored by Senators Levin and Durenburger. The bill would require an agency to establish a rulemaking file at the time it takes any action to consider whether to initiate a rulemaking. The file is then to include any written material it receives, including material from OMB; any written material it submits to OMB, including drafts of proposed or final rules submitted to E. O. 12,291, and any submissions pursuant to E. O. 12,498; a description of changes made as a result of OMB written or oral comment; a record of agency contacts with OMB; and records of the dates on which proposed and final rules are sent to OMB and the dates they are returned. The file is to be opened for public inspection when the proposal is published for public comment. The agency must also publish annually in the Federal Register a list of rules sent over to OMB but never published as proposed. OMB would be required to log any contacts with private parties outside of government about a rulemaking if such contacts form the basis for making a recommendation to the rulemaking agency and it is to forward these records of contacts to the rulemaking agency. Finally, OMB review of proposed and final rules would be limited to 30 days with an opportunity for a 30 day extension for good cause.

172/ See, *supra* pp. 15-16.

173/ 130 *Cong. Rec.* S 340 (daily ed. Jan. 27, 1986).

The proposal goes further than any previous one in this area. Some question may be raised whether a loophole is opened for non-disclosure of nongovernmental contacts with OMB personnel because logging is not required if the "contact" does not "provide[] a basis for any written or oral recommendation or comment." The language leaves open the possibility of an OMB claim that the contact did not result in anything that it did not know before and therefore did not form the requisite basis for comment. Closure of this type of loophole would require logging of all such contacts, at least by name of the party and identification of the rule inquired about. In the past such a broad logging requirement has been deemed by OMB onerous, unnecessary, and intrusive on the deliberative process.

d. Regulatory Review By Congress

Since the invalidation of the legislative veto a variety of proposals have been put forth as substitute review mechanisms for congressional control of agency rulemaking. They have included constitutional amendments to revive the one and two-House veto, 174/ proposals for joint resolutions of approval or disapproval of agency rules, 175/ report and wait requirements, and mechanisms to allow for points of order on legislative appropriations for agencies whose rules have been disapproved by concurrent resolution. 176/ All such proposals suffer from the same key practical objection that was aimed at legislative veto mechanisms prior to Chadha: the institutional incapability of the Congress to effectively deal with the large volume of rules required to be reviewed. One proposal designed to meet this objection, H. Con. Res. 2, 99th Cong., 1st Sess. (1985), would establish a Joint Committee on Regulatory Affairs which would have authority to review all agency rules and would report to each House those rules that required attention. The principal enforcement mechanism of the proposal would be the use of the appropriations process. If Congress adopted a two-House resolution of disapproval objecting to a regulation, it would be a rule of each House that the respective appropriations committees would be prohibited from reporting new appropriations to carry out the regulation.

e. Independent Regulatory Review Bodies

A compromise alternative might be the establishment of an independent regulatory review commission with specific authority to either disapprove "major" rules or to refer particular rules to either

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174/ See, e.g., S. J. Res. 135, 98th Cong., 1st Sess. (1983); H. J. Res. 313 98th Cong., 1st Sess. (1983).

175/ See, *e.g.*, S. 1650 (98th Cong. 1st Sess. (1983)); H.R. 3939, 98th Cong., 1st Sess. (1983).

176/ See "The Legislative Veto After *INS* v. *Chadha*, CRS Review (Fall 1983) at 5-7.

Congress or the President or both for further consideration. Provision might be included for a stay of effectiveness of such targeted rules for a period of time pending such executive or legislative consideration.

f. Enhanced Judicial Review

For several years Senator Bumpers has proposed a more active role for the courts in reviewing agency rulemakings by removing any presumption of validity for such rules and raising the standard for review to require "substantial support" in the record in order to sustain a rule. In effect, the burden of persuasion would be placed on the agency. 177/ Such a proposal was included as part of S. 1080, a broad ranging regulatory reform measure that passed the Senate unanimously in 1982. The proposal has been criticized, however, as giving an inappropriate role to the courts, i.e., it would tend to involve them in substantive review of such rules. 178/

But whatever the merits of any of these proposals, the prospects for legislative action in this area appear uncertain. Developing a consensus for any one measure will be difficult. Moreover, there is some indication that the Congress is content to let OMB take the heat for deregulatory decisions that it cannot or does not want to make. Finally, any legislative initiative that takes away or diminishes executive authority in this area must face up to the prospect of a presidential veto and the necessity of mustering a super majority to override. For the same reason, a voluntary relinquishment or modification of the present scope of executive authority over regulatory activities by this or any future administration is highly problematic.

Consequently, it may be necessary to await a judicial resolution of the issue. When and how that may come about is uncertain, particularly with the predilection of the courts to avoid constitutional issues and especially those which involve sensitive interbranch prerogatives. The likelihood is a case by case approach in which alleged OMB interference is dealt with in the context of a particular factual pattern. It is possible that the courts might adopt an approach which requires some degree of logging in order to protect its judicial review function, but that is of course entirely speculative and may require judicial experience with a large number of cases before taking such a step. Thus far there have been few cases directly challenging instances of OMB interference. Interestingly, one reason for the paucity of litigation is the inability of potential

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177/ S. 1766, 98th Cong., 1st Sess. (1983).

178/ Woodword & Levin, In Defense of Deference: Judicial Review of Agency Action, 31 Ad. L. Rev. 329 (1979); Rosenberg & Natter, Scope of Judicial Review of Agency Rulemaking: A Review and Assessment of Pending Congressional Proposals for Change (CRS, August 24, 1982).

plaintiffs to gain access to the information they need to bring a successful suit, an ironic Catch-22. In the end, the most satisfactory solution will likely arise out of an accommodation between the branches that is required by some political necessity. Whether the pressure for such an accommodation comes from the courts, or a public outcry over a major revelation of OMB overreaching, or some other source, cannot be predicted.

OMB AND PAPERWORK MANAGEMENT

Stephanie Smith*

In 1980, Congress enacted the Paperwork Reduction Act in response to growing concern over the ever increasing amount of Federal paperwork requirements being imposed on American citizens, businesses, and organizations. It established a central policy making framework, set broad objectives, established paperwork reduction goals and provided specific tasks and milestones designed to improve the management of all Federal information resources. 1/ Passage of the Act reflected Congress' desire to define more clearly the oversight responsibilities of the Office of Management and Budget (OMB) as they related to the reporting requirements of Federal agencies. Upon signing Public Law 96-511 on December 11, 1980, President Jimmy Carter stated that the new legislation represented "one of the most important steps we have taken to eliminate wasteful and unnecessary Federal paperwork and . . . unnecessary Federal regulations." Its approval, he felt, would enable "the Government to operate more efficiently for all our citizens." 2/

History and Background

Concern over the Federal paperwork burden is something that has troubled Congress at least since 1810, when a committee was established to determine how important public documents were to be distributed and preserved. A century later, responding to growing concern over the lack of uniformity and controls in the Federal Government's recordkeeping, President Theodore Roosevelt sought to simplify statistical reporting and duplication by creating the Interdepartmental Statistical Committee in 1908. 3/ While the panel issued no formal report, its identification of inadequacies relating to statistical reporting and the collecting of data provided a framework for identifying many of the problems that were to contribute to the paperwork burden.

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1/ U.S. General Accounting Office. Report by the Comptroller General of the United States. Implementing the Paperwork Reduction Act: Some Progress, But Many Problems Remain. April 20, 1983. Washington, U.S. Govt. Print. Off., 1983. p. 1.

2/ U.S. President, 1977-1981 (Carter). Paperwork Reduction Act of 1980. Weekly Compilation of Presidential Documents, v. 16, Dec. 15, 1980. p. 2795.

During the next eighty years, Federal paperwork requirements have grown to the point that they touch upon almost every facet of American life. In 1948, the first Hoover Commission found that the Federal Government's recordkeeping cost the Federal taxpayer approximately $27 million. 4/ Almost thirty years later, the Commission on Federal Paperwork reported in 1977 that, while the total costs were difficult to determine, more than $100 billion was being spent on recordkeeping requirements. 5/

At the same time, rapidly changing technological developments have revolutionized the manner in which data are collected and stored. As a result, the recordkeeping and filing of reports by businesses, individuals and organizations regarding Federal programs and regulations have created the paperwork burden as we know it today.

When Congress turned its attention to Federal records management with the passage of the Budget and Accounting Act of 1921, 6/ however, the problem was far less complex. This Act created the Bureau of the Budget, and in conjunction with amending legislation the following year 7/ placed controls on the quantities and types of Federal reports and documents. Although this legislation emphasized internal management, it did not address the problems relating to the growing burden of reporting requirements being placed upon the private sector.

3/ U.S. Congress. House. Committee on Post Office and Civil Service. The Federal Paperwork Jungle. House Report No. 52, 89th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1965. p. 8.

4/ U.S. Commission on Organization of the Executive Branch of the Government. Task Force Report on Records Management. Washington, U.S. Govt. Print. Off. January 1949. p. 1.

5/ U.S. Commission on Federal Paperwork. Final Summary Report. Washington, U.S. Govt. Print. Off., 1977. p. 1.

6/ 31 U.S.C. 18.

7/ 44 U.S.C. 220, (now 1108).

In July 1935, Congress formally authorized the Central Statistical Board to coordinate the statistical services of the Federal Government.[8] The functions of the Board included the task of eliminating statistical duplication among the Federal agencies. Upon President Franklin D. Roosevelt's request, the Board prepared a study which found that there was considerable duplication in statistical reporting requirements, resulting in an unnecessary burden to the small business community.[9]

With the U.S. entry into World War II in December 1941, the increased reporting requirements associated with price and production control required by Federal agencies placed even greater burdens upon the business community. Soon thereafter, the obvious need for coordination of the Federal Government's recordkeeping activities resulted in the creation of the Senate Special Committee to Study Problems of American Business.[10] The following December, Congress approved the Federal Reports Act of 1942 [11], which had been developed by the Special Committee.

The Federal Reports Act articulated the first Federal policy for controlling Government paperwork and provided the statutory authority for regulating paperwork for nearly forty years. The Act's major objective was to obtain information needed by Federal agencies with a minimum burden upon private businesses and individuals, and at a minimun of cost to the Federal Government. All unnecessary duplication of reports and questionnaires was to be eliminated, and information sharing was to be used by Federal agencies. To achieve these goals, the Director of the Bureau of the Budget (later OMB) was authorized to investigate the methods used by agencies for gathering information and to coordinate an information-collecting service. A provision was included to enable the Director to disallow information requests in the event an agency's request for information was unnecessary or being duplicated by another agency.

OMB's mandate to regulate better the paperwork burden, however, was limited by the Federal Reports Act's exemptions for many kinds of reporting, such as tax and financial reporting, which together constituted over half of all public reporting. Over a period of years, the Act was further limited by legislation which exempted selected categories of forms and reports from OMB's jurisdiction. [12]

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[8] 49 Stat. 498.

[9] U.S. Commission on Federal Paperwork. A Report of the Commission on Federal Paperwork. History of Paperwork Reform Efforts. July 29, 1977. Washingtin, U.S. Govt. Print. Off., 1977. p. 17.

[10] The Federal Paperwork Jungle, p. 9.

[11] 56 Stat. 1078.

Between 1947 and 1955, two Commissions on Organization of the Executive Branch of the Government, better known as the Hoover Commissions, conducted two major studies of the organization and functions of the executive branch.

Less than ten years after the first Hoover Commission had reported, the second Hoover Commission's Task Force on Paperwork Management estimated that the increasing Federal paperwork burden cost taxpayers in excess of $4 billion each year to process. [13] The task force's study found that the Federal Reports Act would be more effective if the Federal agencies broadened their concept of records management beyond the technical storage and disposal aspects to include reducing the number of reports required by each agency. [14]

In May 1956, President Dwight D. Eisenhower endorsed the recommendations of the second Hoover Commission in a special message to Congress. [15] He directed the Bureau of the Budget to strengthen its budgeting, accounting, and other management practices to achieve better economy within the Federal Government. The same year, the Bureau of the Budget issued a report stating that it had intensified its review procedures under the Federal Reports Act and was in the process of taking appropriate action on the paperwork recommendations identified by the Hoover Commission Task Force. [16]

During the next decade, Congress held various hearings on paperwork management and the paperwork requirements that the Federal Government had placed on businesses and individuals.

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[12] U.S. Office of Management and Budget. Reducing Federal Paperwork: 1980-1983. A Report to Congress Under the Paperwork Reduction Act of 1980. January 1984. Washington, Executive Office of the President, Office of Management and Budget, 1984. p. 1.

[13] U.S. Commission on Organization of the Executive Branch of the Government. Task Force Report on Paperwork Management. Part one. Washington, U.S. Govt. Print. Off. January 1955. p. 2.

[14] Ibid. p. 18.

[15] U.S. President, 1953-1961 (Eisenhower). Public Papers of the Presidents. Dwight D. Eisenhower, 1956. Washington, U.S. Govt. Print. Off., 1956. p. 485-486.

[16] The Federal Paperwork Jungle, p. 12.

Meanwhile, Federal paperwork continued to grow at an unprecedented rate, as new regulatory programs were created and the Federal tax code became increasingly more complex. 17/

Realizing that new methods for controlling paperwork were needed, Congress established the Commission on Federal Paperwork in 1974. In its 1977 final report, the Commission found that at least four different agencies, including OMB, GAO, GSA, and the Department of Commerce had overlapping responsibilities for the management of Federal paperwork programs. The Commission also reported that the existing paperwork regulations did not effectively deal with the "clearance process--wherein agency requests to collect information from the public are reviewed." This step was extremely important because it was "the last administrative opportunity to control or limit paperwork." 18/

Following publication of the Commission's final report, OMB assigned the Commission's recommendations to the appropriate executive branch agencies for implementation. According to a 1979 OMB status report, 269--over half--of the Commission's 520 recommendations had been implemented. 19/

In March 1980, GAO prepared an independent assessment for Congress of OMB's program to implement the recommendations of the Federal Paperwork Commission. The report criticized OMB's status reports, finding that they overstated progress being made and provided inaccurate claims regarding the implementation of the Commission's recommendations. GAO recommended that Congress enact legislation requiring OMB to establish a legislative program for previously unassigned and unresolved Commission recommendations, and to establish an Office of Federal Information Policy within OMB. 20/

17/ Reducing Federal Paperwork: 1980-1983. p. 2.

18/ Final Summary Report. p. 4.

19/ U.S. Office of Management and Budget. Paperwork and Red Tape: New Perspectives and New Directions. A Report to the President and the Congress. Washington, Executive Office of the President, Office of Management and Budget, 1979. p. 5.

20/ U.S. Congress. General Accounting Office. Report to the Congress by the Comptroller General. Program to Followup Federal Paperwork Commission Recommendations is in Trouble. Washington, U.S. Govt. Print. Off., GGD-80-36. March 14, 1980. p. iv.

The Paperwork Reduction Act of 1980

Realizing that the Federal Reports Act of 1942 was inadequate, Congress enacted the Paperwork Reduction Act of 1980 to define better OMB's oversight responsibilities of Federal agency reporting requirements. A major objective of the Act is to reduce the information burden imposed on the public by the Federal Government, while ensuring that Federal agencies collect only as much information as they need and can use effectively. The Act sets in place mechanisms intended to measure and manage the Federal Government's information resources and establishes requirements for reducing the cost of collecting, managing, and disseminating information. Under the Act, the use of information technology to improve the efficiency of Federal programs and activities is also encouraged.

To accomplish these objectives, the Paperwork Reduction Act established several organizational and enforcement requirements. An Office of Information and Regulatory Affairs (OIRA) was established within OMB, headed by an Administrator reporting directly to the Director of OMB. The Administrator serves as principal adviser to the OMB Director on Federal information policy.

The Act authorized the creation of a Federal Information Locator System (FILS), to be designed and operated by OIRA. By April 1, 1982, OMB was required to establish FILS, which would include a directory of information resources, a data element dictionary, and an information referral service.

As required by the Paperwork Reduction Act, OMB was to reduce the existing Federal paperwork burden by 15 percent. OMB was also required to complete action on recommendations of the Commission on Federal Paperwork; establish a schedule and a management control plan for information resources management; and develop a 5-year plan for meeting the automated data processing and telecommunication needs of the Federal Government.

In addition, the Act authorized OMB to administer the Information Collection Budget (ICB) that would be responsible for measuring and controlling the number of hours individuals, businesses, and State and local governments spend in maintaining or preparing federally mandated forms, reports, and records. The first ICB, released in 1981, contained a breakdown, by agency, of the number of reporting hours imposed on the public. According to then OMB Director James McIntyre, the ICB was responsible for reducing the public's reporting burden by nearly 60 million hours. 21/

21/ U.S. Office of Management and Budget. Information Collection Budget of the United States Government for Fiscal Year 1981. Washington, Executive Office of the President, Office of Management and Budget, 1981. p. 1.

Implementation of the Paperwork Reduction Act

On April 1, 1982, OMB released its first annual report, as required by the Paperwork Reduction Act, entitled Managing Federal Information Resources. 22/ In its report, OMB stated that good progress had been made in furthering the Act's important policies of improved information management, and had reduced reporting burdens on the private sector.

OMB reported that the Office of Information and Regulatory Affairs was established on January 29, 1981, before the Act's required deadline of April 1. OMB Bulletin No. 81-21 was issued on June 8, 1981, to provide guidance to Federal agencies on complying with the objectives of the Paperwork Reduction Act.

According to OMB, it had been successful in integrating the Federal agencies previously not subject to OMB's oversight. OMB stated that it had established the foundation for development of a Federal Information Locator System, as required by the Act. In addition, OMB's initiatives were responsible for reducing the Federal paperwork burden by nearly 17 percent since the Act had been in existence. 23/

Despite OMB's first year favorable assessment on the progress which had been made in implementing the Paperwork Reduction Act, various criticisms were lodged against OMB. Barely six months after the Act became effective, the General Accounting Office reported to the House Subcommittee on Legislation and National Security that OMB was not properly implementing the Act. According to the GAO report, OMB had failed to fulfill its responsibilities under the law, and had opted for a policy of "minimal guidance." 24/ Addressing the issue of overall implementation, GAO Comptroller General Charles Bowsher subsequently told the Subcommittee during hearings that OMB had not provided the visible or forceful leadership necessary to achieve the Act's objectives, and had approved no formal plans for implementing the Act. 25/

22/ U.S. Office of Management and Budget. Managing Federal Information Resources. First Annual Report Under the Paperwork Reduction Act of 1980. April 1, 1982. Washington, Executive Office of the President, Office of Management and Budget, 1982. 35 p.

23/ Ibid., p. 5-6.

24/ U.S. Congress. House. Committee on Government Operations. Subcommittee on Legislation and National Security. Implementation of the Paperwork Reduction Act of 1980. Hearings, 97th Cong., 1st Sess. Oct. 21, 1981. Washington, U.S. Govt. Print. Off. p. 13.

25/ Ibid., p. 3-4.

The following year, hearings were held in which the Director of the General Government Division of GAO testified that considerable progress had been made by OMB in controlling the Federal paperwork burden, and that OMB would meet the Act's 15 percent reduction-in-paperwork goal by the end of fiscal year 1982. 26/

GAO had found, however, that a number of problems still existed: OMB's Office of Information and Regulatory Affairs was being used for regulatory review functions not prescribed by the Paperwork Reduction Act; OMB had missed its statutory deadline for developing the Federal Information Locator System; and more than half of the Federal agencies had missed the Act's deadline for designating their senior information management officials. 27/

In his testimony, the Administrator of OIRA responded that OMB did not have the resources to establish the Federal Information Locator System by the April 1, 1982, deadline. During the next year, continued the Administrator, OMB would put a FILS prototype on line, and would also meet the FY 1983 goal of a further 10 percent reduction in the paperwork burden. 28/

A 1983 report prepared by GAO concluded that limited progress had been made by OMB in the areas of information resources management. The General Accounting Office noted that OMB's decision to assign the Office of Information and Regulatory Affairs primary responsibility for its regulatory reform program was the main reason for OIRA's failure to complete the objectives of the Act. This decision had resulted in OIRA staff performing duties related to regulatory issues that were not primarily associated with either their information or paperwork responsibilities. 29/

26/ U.S. Congress. Senate. Committee on Governmental Affairs. Subcommittee on Federal Expenditures, Research, and Rules. Implementation of the Paperwork Reduction Act of 1980. Hearings. 97th Cong., 2d Sess. April 14, 1982. Washington, U.S. Govt. Print. Off., 1982. p. 65.

27/ Ibid., p. 65.

28/ Ibid., p. 18-23.

29/ U.S. General Accounting Office. Report to the Chairman, Committee on Government Operations, House of Representatives by the Comptroller General of the United States. Implementing the Paperwork Reduction Act: Some Progress, But Many Problems Remain. Report No. GAO/GGD-83-35. Washington, U.S. Govt. Print. Off. April 20, 1983. p. 29.

GAO also reported that while OMB had experienced almost a 250 percent increase in agency requests for paperwork approval, the limited funding resources available to OIRA were not adequate to cope with this additional paperwork burden. 30/

In order to better implement the Paperwork Reduction Act, the GAO report recommended that Congress might consider legislation requiring OMB to report annually on the funding needed to fully implement the Act. GAO recommended that OMB be required to report on how it had previously utilized the resources expended on implementation of the Act. In addition, GAO suggested that Congress provide a separate appropriation for implementing the Act, and amend the Act to prohibit OIRA from performing any nonrelated duties. 31/

Paperwork Reduction Act Amendments

Congressional hearings and GAO studies resulted in the development of several proposed amendments to the original Act during the 98th Congress. In addition to strengthening congressional oversight of OMB's mandate under the original Act, the proposed bills would have extended the authorization of appropriations for OMB's Office of Information and Regulatory Affairs for an additional four years through fiscal year 1988.

On November 7, 1983, the House passed the Paperwork Reduction Act Amendments of 1983 (H.R. 2718) establishing line item funding for the functions of OMB's Office of Information and Regulatory Affairs. The bill would have clarified OMB's authority to review information collection requests in existing, as well as proposed, regulations. In the Senate, the Paperwork Reduction Act Amendments of 1984 (S. 2433) were introduced on March 15, 1984. The bill would have strengthened congressional oversight of OIRA by requiring Senate confirmation of its Administrator, a Presidential appointee. OMB would have been required to submit to Congress a detailed report describing its annual budget request in the paperwork and regulatory review, general information, statistical, automatic data processing, and telecommunications policy areas.

Neither bill was enacted before the 98th Congress adjourned. Critics of both bills felt that enactment of legislation to strengthen OIRA's oversight functions would have given OMB too much authority over the Federal Government's rulemaking process. Although OIRA continues to operate under a general OMB appropriation, without the authorization of specific legislation, its power to enforce the Paperwork Reduction Act may become considerably more limited in the future.

30/ Ibid., p. 40.

31/ Ibid., p. iii-iv.

Future Issues of Paperwork Management

In its FY 1986 Management of the United States Government, 32/ OMB reported that it had vigorously implemented the Paperwork Reduction Act by prohibiting lengthy and duplicative Federal reporting requirements. By the end of 1983, continued OMB, the Federal paperwork burden had been reduced by 32 percent, surpassing the Act's statutory requirement. The OMB report stated that the paperwork burden "has proven much greater than was thought to be the case" when the Act was enacted in 1980. 33/

Since enactment of the Act in 1980, the General Accounting Office has stated that, while OMB has been successful in meeting its requirement to reduce the paperwork burden in terms of total percentages, OMB has been less successful in implementing the other statutory requirements of the Act. According to GAO's findings, OMB should give particular attention to setting uniform and consistent policies for its management of Federal paperwork, while providing better guidance to the agencies for implementing the Act. 34/

Passage of the Paperwork Reduction Act Amendments as introduced in the House and Senate during the 98th Congress would have significantly increased congressional oversight of OIRA's activities, as well as clarified OMB's tasks and deadlines originally set forth in the Paperwork Reduction Act.

Many Members of Congress maintain that increased oversight will be necessary to ensure that OMB uses its appropriated resources as mandated by the original Act. They see this as an important issue in guaranteeing that the use of funds and manpower are not being used by OMB in its regulatory review functions, thereby shortchanging the implementation of the Paperwork Reduction Act. 35/ The question remains whether OMB has the determination to make full implementation of the Act a major priority on its own initiative, or whether the Act will have to be amended statutorily requiring OMB to take a strong leadership role. 36/

32/ U.S. Office of Management and Budget. Management of the United States Government. Fiscal Year 1986. Washington, Executive Office of the President, Office of Management and Budget, 1985. 106 p.

33/ Ibid., p. 63.

34/ GAO, Implementing the Paperwork Reduction Act: Some Progress, But Many Problems Remain, p. i-iv.

35/ Paperwork Cop Loses Some Clout. Washington Post, Nov. 2, 1985. p. A21.

36/ GAO, Implementing the Paperwork Reduction Act, p. v.

OVERSIGHT OF STATISTICAL POLICY

Jeanne E. Griffith*

There are two major statutory provisions for statistical policy coordination and program oversight. The first is the Budget and Accounting Procedures Act of 1950 (31 U.S.C. §103); this law provides the general mandate for the President to oversee and coordinate the activities of the statistical agencies of the executive branch. It directs the President:

> "... to develop programs and to issue regulations and orders for the improved information for any purpose by the various agencies in the executive branch of the government. Such regulations and orders shall be adhered to by such agencies."

The second statute, the Paperwork Reduction Act of 1980 (44 U.S.C. §3501-3520) replaced the Federal Reports Act of 1942 by substituting new provisions for that chapter. It established the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB). The Administrator of OIRA is charged with, among other duties, statistical policy and coordination (§3504(d)). The specific duties detailed in that section are:

> "(d) The statistical policy and coordination functions of the Director shall include:
>
> (1) developing long range plans for the improved performance of Federal statistical activities and programs;
>
> (2) coordinating, through the review of budget proposals and as otherwise provided in this section, the functions of the Federal Government with respect to gathering, interpreting, and disseminating statistics and statistical information;
>
> (3) developing and implementing Government-wide policies, principles, standards, and guidelines concerning statistical collection procedures and methods, statistical data classifications, and statistical information presentation and dissemination; and
>
> (4) evaluating statistical program performance and agency compliance with Government-wide policies, principles, standards, and guidelines."

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These statutes have been implemented through executive orders, the most recent of which is E.O. 12318, dated August 21, 1981. This order amended previous executive orders related to statistical policy, to be consistent with the mandate of the Paperwork Reduction Act restoring that function to OMB from the Department of Commerce.

Historical Review of the Statistical Policy Function 1/

The current statistical policy office in OMB had its origins in the Central Statistical Board (CSB) established by executive order on July 27, 1933. That Board was established to formulate statistical standards, coordinate statistical programs, and advise all agencies engaged in collecting statistical information. In 1935, P.L. 74-219 gave the CSB its statutory mandate. The next year, the CSB issued its first regulation, requiring every Federal agency to submit its general questionnaires for review prior to use. The Board very quickly addressed issues of duplication, excessive burden on respondents, and confidentiality of individual reports.

The Reorganization Act of 1939 transferred the CSB to the Bureau of the Budget (at the same time that the Bureau of the Budget was transferred from the Department of Treasury to the Executive Office of the President). This permitted the CSB to use the influence of the budget in working with the statistical agencies. The name was soon changed to the Division of Statistical Standards (DSS). The DSS began producing the monthly publication, the Statistical Reporter, as a means of communication within the statistical community, both within and outside the Federal government. In 1941 and 1942, the division issued the first statistical standard, the Standard Industrial Classification (SIC). That standard, like others that followed, was designed to provide a useful plan of classification of many types of statistical data according to a consistent set of categories, in this case, for industries. With the focus on the development of economic statistics at this time, the classifications of industries for all economic activity and the adoption of this standard by all Federal agencies producing data on industries permitted more consistent and comparable information from a variety of sources.

When Congress passed the Federal Reports Act of 1942, it gave the DSS broadened powers with regard to coordination and oversight of the statistical agencies. It now had the explicit power to prevent agencies from using unapproved forms, to designate lead agencies in interagency data collection efforts, to prevent unnecessary collection of information, and to require sharing of data among statistical agencies.

1/ Based largely on information contained in Duncan, Joseph W. and William C. Shelton. Revolution in United States Government Statistics: 1926-1976. Office of Federal Statistical Policy and Standards. U.S. Department of Commerce. October 1978.

In the 1950s, DSS focused attention on development of the national economic accounts, as a means of integrating and coordinating the programs that produced economic statistics. By the 1960s, there were increasing demands for improved social and demographic statistics of broader scope; DSS played an active coordinating role in the expansion of statistics available to support the expanding social programs of the Federal government. In the latter half of the decade, changes in economic trends led to increased attention on price and employment statistics. Throughout this period, the office continued to attend to issues of data quality, timeliness, and availability and to use interagency committees to encourage interaction among statistical agencies. The office used budget reviews, questionnaire clearance requests, interagency committees, and publications as means of coordination.

In the 1970s, the name of the office was changed to the Statistical Policy Division (having gone through two other name changes in the interim), reflecting its increasingly broad scope of activities. Again, in this period, improvements in economic statistics were stressed, particularly the quality and timeliness of the original releases of principal economic indicators. The division published the first attempt at systematically presenting an integrated statistical portrait of broad social characteristics of the nation Social Indicators 1973; subsequent volumes continuing this effort were published by the successor office (the Office of Federal Statistical Policy and Standards) and the Bureau of the Census. In the mid-1970s, additional attention was paid to the long term planning function of the office.

In 1977, the statistical policy function was transferred from OMB to the Department of Commerce under Executive Order No. 12013 as part of President Carter's reorganization of the Executive Office of the President. The Secretary of Commerce established the Office of Federal Statistical Policy and Standards under the Chief Economist for the department. The executive order also established the Statistical Policy Coordination Committee, a cabinet committee chaired by the Secretary of Commerce, to advise the President on all issues of statistical policy. The functions assigned to OFSPS remained the same, with primary statutory authority still stemming from the Federal Reports Act of 1942 and the Budget and Accounting Procedures Act of 1950.

The statistical community, both within and outside the Federal government, debated the effects of placing OSFPS in the Department of Commerce from the time of the transfer. In 1978, the President's Reorganization Project for the Federal Statistical System was established to recommend an institutional framework for the management of statistical policy coordination and oversight and, in general, to improve the Federal statistical system. That project recommended establishment of a strong central statistical agency at the highest level in the Federal statistical system; it would be assigned various responsibilities for coordination, planning, and management of Federal statistical programs. Options for specific choices of levels of responsibility and authority were presented throughout the report. By the time that project submitted its final report, however, the Paperwork Reduction Act of 1980 had been signed into law on December 10, 1980.

The Paperwork Reduction Act transferred responsibility for statistical policy back to the Office of Management and Budget, into the Office of Information and Regulatory Affairs (OIRA). Under the Act, seven information policy functions previously located in different areas of OMB and in the Department of Commerce are combined in OIRA, including the traditional statistical oversight functions of statistical standards and statistical policy coordination. These are combined with records management, privacy of records, interagency sharing of records, acquisition and use of automatic data processing and telecommunications, and regulatory policy.

Staff Levels for the Statistical Policy Function

An issue that is of current concern to the statistical community has also accompanied the policy function from its very early days: the size of the staff devoted to coordination and oversight. The Central Statistical Board began to review forms in 1936; immediately each year the work load associated with monitoring the statistical activities of the government in this way began to increase. In 1938, however, the budget for the Board was cut by more than 50 percent, and there was a significant staff reduction. The workload of the office declined accordingly. In their annual report the Board noted that although they had the formal procedure in place to require approval of statistical forms, they did not have sufficient staff to keep in contact with agencies to ensure that forms were being submitted. They noted that, "The effectiveness of Board review work is dependent on a staff sufficiently large and trained in a sufficiently wide variety of economic and social fields to carry out this responsibility thoroughly." 2/

The staff level issue has been replayed repeatedly since that time. The statistical policy function reached its highest point in 1947, when there were 69 persons assigned to it. Although the scope and size of the statistical programs it was overseeing increased substantially over the next decades, the staff of the office declined, to 29 persons in 1977. When the statistical policy function moved to Commerce in 1977, responsibility for coordination of administrative data collection and management of paperwork burden remained in OMB. Fifteen staff moved to Commerce to create the Office of Federal Statistical Policy and Standards (OFSPS). The staff of OFSPS increased to 25 by 1980.

When the statistical policy function was moved back to OMB in 1981, OMB decided that under staff constraints for OIRA as a whole,

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2/ U.S. Central Statistical Board. Fourth Annual Report of the Central Statistical Board. Washington, D.C. June 30, 1938.

it could not afford to dedicate a staff of 25 to statistical policy. As a result, only 15 of the Commerce staff moved to OMB. Shortly after the staff returned to OMB, several staff were reassigned to the paperwork control section of OIRA. In addition, staff who resigned from the office were not replaced (including the staff director) so that personnel positions could be assigned to other sections of OIRA. By 1982, the size of the office responsible for statistical policy had declined to 5. In response to recommendations published in a report by the Government Operations Committee 3/ and a letter from Chairman Brooks to OMB director David Stockman, Christopher DeMuth (then Administrator of OIRA) stated in a letter to Chairman Brooks on December 3, 1982 that he intended to hire a chief statistician. OMB hired a chief statistician to head the office in June 1983. The staff remains at six today.

Current Organization of the Statistical Policy Function

The Paperwork Reduction Act of 1980 transferred the statistical policy function from Commerce to OIRA, within OMB. OMB gave the function the equivalent status of a branch, a lower level than it had had when it left OMB as a division four years previously. Within OMB, the statistical policy office reports through the chief statistician to the Deputy Administrator of OIRA.

The reductions in staff have required several changes in the way in which the office approaches its mandated activities. In previous offices individual staff members had been assigned to monitor specific substantive areas cutting across statistical agencies (e.g. labor, trade, health, education, or demographic statistics). The rationale was to hire senior level staff who were knowledgeable about both the substantive and statistical aspects of their area of responsibility. They would oversee and coordinate all agencies involved in producing or using statistics in that substantive area. This approach provided an interagency perspective on statistical issues that was not possible in the budget or paperwork control sides of OMB, since these areas were organized by assigning staff to cover all activities in specific agencies.

As a result of staff reductions, there are no longer sufficient staff to serve as individual specialists to cover each of the different substantive areas. Staff are assigned to specific projects as required, with some staff assigned to cover specific agencies or portions of agencies. But the assignments are no longer made on a substantive basis. 4/

3/ U.S. Congress. House. Committee on Government Operations. Reorganization and Budget Cutbacks May Jeopardize the Future of the Nation's Statistical System. H.R. No. 97-901. Washington, U.S. Govt. Print. Off. September 30, 1982.

4/ Telephone interviews with agency officials, April 1985.

Current Policies of the Statistical Policy Office

The Paperwork Reduction Act of 1980 identifies four specific responsibilities of the statistical policy office in OIRA. The first primary responsibility is long term planning. In the 1970s there were several related activities initiated by the office, both while it was at OMB and at Commerce. First, in 1973, the office began the Gross National Product Data Improvement Project, to provide a long term plan for improving the economic data system for the GNP accounts. A report with recommendations was issued in 1977. Second, in 1978 the office published A Framework for U.S. Federal Statistics for the 1980s. This comprehensive document was intended to serve as a framework within which policy decisions about the statistical system could be made.

Another initiative started while the office was at Commerce involved the Statistical Policy Coordination Committee, which served as a coordinating committee to consider decisions affecting more than one agency. The Committee, in early 1980, began a process to develop a long range planning system for all major statistical agencies. In general, these activities have not been pursued since the statistical policy office was returned to OMB. The Bureau of Economic Analysis has assumed the responsibility of coordinating efforts to improve the GNP accounts based on the report. However, since all of the data for the accounts come from other agencies, the Bureau is dependent on its ability to persuade policymakers in the agencies and at OMB of needed changes in various data bases. The Framework has not been used as a planning document and there is no longer an interagency policy committee to develop a long range planning system.

The current chief statistician has expressed reservations about system-wide long range planning. She notes that long range plans for the entire system are not appropriate because needs cannot be foreseen. Instead, the policy of the office in this area is to identify specific areas that need attention and to focus on bringing about changes in such areas over a period of years. Examples she has given include planning for the 1990 Census of Population and Housing and redefining Metropolitan Statistical Areas (MSAs) following the Census. 5/ For the former, OMB chairs the Federal Agency Council on Demographic Censuses, an interdepartmental committee to advise the Census Bureau on content issues. Activities related to redefining MSAs are concentrated around the period of the Census, and will not be initiated again until late in this decade.

Another responsibility of the office is to coordinate the statistical activities of the Federal government. In the 1970s this was achieved through close work with the budget staff at OMB as well

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5/ U.S. Congress. House. Committee on Government Operations. The Federal Statistical System: 1980--1985. 98th Cong., 2d Session. Washington, U.S. Gov. Print. Off., 1984. p. 48.

as through activities related to the paperwork clearance process. In the budget process, three components enhanced the coordination effort: 1) Exhibit 54 of Circular A-11, 2) the annual report on statistical programs, and 3) an annual review with the Director of OMB on statistical programs. Exhibit 54 required agencies to submit a report on budgets associated with their statistical activities at the same time that they submitted their annual budget request to OMB. (There were, and continue to be, several such special exhibits associated with the budget process). The requirement for this exhibit was discontinued, beginning with the FY 1984 budget season. The statistical policy staff now obtain voluntary cooperation from agencies in submitting a memorandum regarding the outcome of the budget deliberations on statistical activities after the President's budget has been made final.

The initial proposed budgets for a few agencies whose missions are entirely statistical (e.g. Bureau of the Census, Bureau of Labor Statistics) are available as separate documents submitted to OMB by the departments. As a result, less information on the initial budgets for statistical programs is available to statistical policy staff early in the Administration's budget preparation process. In addition, the annual report on the budget for the statistical system is issued much later in the period of budget deliberations of the Congress. The report for the FY 1986 budget was issued in July 1985; in the late 1970s this report was issued in February each year. There has not been an annual meeting with the Director about statistical program budgets since the statistical policy office moved to Commerce in 1977. 6/

At this time, there are not any formal procedures to ensure the involvement of the statistical policy office in either the budget deliberations or the paperwork clearance activities of OMB. As noted above, some agencies' budgets are made available as separate documents. For the most part, the office involves itself with issues that its members identify.

An additional coordination and communication mechanism used by the statistical policy office since its earliest days was the monthly publication, Statistical Reporter. This publication was cancelled in 1982 by OMB as a cost saving measure. In a series of letters exchanged among the House Committee on Government Operations, the American Statistical Association, and members of the statistical community, widespread concern was voiced about the resulting absence of a comprehensive system of communication about developments in statistical programs.

The third major responsibility of the statistical policy office is to develop and implement government-wide standards and guidelines for statistical procedures and activities. Through the 1970s and earlier, a series of statistical standards were issued by OMB.

6/ Telephone interviews with agency officials, April 1985.

Responsibility for implementing these was transferred to Commerce and back to OMB with the office. Of all the existing standards, 19 were issued before 1977; the last one was issued in 1982. (See Chart 1 for list of statistical standards).

The statistical standards are currently in the process of being revised. The Standard Industrial Classification (SIC) was last updated in 1972. A revised system was developed in the late 1970s and early 1980s for implementation in the 1982 Economic Censuses. However, this revision was never implemented because of lack of funding in the data producing agencies. The SIC is now being updated to reflect changes in the economy that have occurred since 1972, for implementation in 1987. OMB chairs the Technical Committee on Industrial Classification that will propose recommended changes to the statistical policy office. Other standards are also being revised; in early 1984 the chief statistician stated that several revised standards would soon be published in the Federal Register for comment. 7/ Statistical policy directive No. 3, "Compilation, Release, and Evaluation of Principal Federal Economic Indications" was published September 25, 1985; no other standards have yet been revised. 8/

The statistical policy office has recently noted that certain of the statistical standards rely heavily on the substantive expertise of a single agency. Although the roles of these "lead agencies" are not specified, it appears that the office expects them to assume some responsibilities related to the implementation of the standards. 9/

The fourth mandated activity for the statistical policy office is to evaluate statistical program performance and agency compliance with Government-wide statistical policy. The statistical policy office has never placed a high priority on formal evaluations of statistical programs. Currently OMB is not undertaking any major evaluations of statistical agencies or programs. The chief statistician states that this activity is incorporated as part of the paperwork clearance process. In this process, specific programs are scrutinized to assure their compliance with established policies and standards. 10/ In this respect, the current office is continuing previous statistical policy procedures for ensuring this compliance.

7/ Ibid., p. 55.

8/ Telephone interview with agency official, February, 1986.

9/ Statistical Policy Office. Office of Information and Regulatory Affairs. Federal Statistics: A Special Report on the Statistical Programs and Activities of the United States Government, Fiscal Year 1985. Washington. April 1984. p. 73.

10/ Ibid., p. 67.

CHART 1. Directives for the Conduct of Federal Statistical Activities

Number	Title
Directive No. 1.	Standards for Statistical Surveys
Directive No. 2.	Standards for the Publication of Statistics
Directive No. 3.	Compilation and Release of Principal Federal Economic Indicators
Directive No. 4.	(Former Directive No. 4 was incorporated into Directive No. 3 in 1981)
Directive No. 5.	Standard Reference Base Period for Federal Government General-Purpose Index Numbers
Directive No. 6.	Standard Federal Administrative Regions
Directive No. 7.	Standard Metropolitan Statistical Areas
Directive No. 8.	Standard Industrial Classification of Establishments
Directive No. 9.	Standard Industrial Classification of Enterprises
Directive No. 10.	Standard Occupational Classification
Directive No. 11.	Standard Data Source for Statistical Estimates of Labor Force and Unemployment
Directive No. 12.	Standard Definition of Payroll Period for Employment Reports
Directive No. 13.	Standard Data Source of Total Population Used in Distributing Federal Benefits
Directive No. 14.	Definition of Poverty for Statistical Purposes
Directive No. 15.	Race and Ethnic Standards for Federal Statistics and Administrative Reporting
Directive No. 16.	Standard Classification of Fields of Science and Engineering
Directive No. 17.	Standard Gas Pressure Base
Directive No. 18.	Providing of Statistical Information to International Organizations

Directives for the Conduct of Federal Statistical Activities--
(Continued)

Number	Title
Directive No. 19.	Reports to the Department of Commerce on International Transactions
(unnumbered)	Comparability of Statistics on Business Size

Source: Statistical Policy Office. Office of Information and Regulatory Affairs. Federal Statistics: A Special Report on the Statistical Programs and Activities of the United States Government, Fiscal Year 1985. Washington. April 1984. p. 69.

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Future Issues of Statistical Policy

There are several issues related to OMB's management of statistical policy. The broadest issue is to determine who is to be served by Federal statistical programs. The current OMB position appears to be that Federal statistics should be produced and disseminated only if they are directly related to the missions of Federal agencies or the administration of their programs. However, the administration of many Federal programs is the responsibility of lower levels of government. In addition, decisions made by the private sector or other governments about social and economic issues depend greatly on data produced by the Federal government.

A second issue is whether a new approach should be taken to the oversight and coordination of Federal statistical programs. Numerous options have been considered in the past for the location and authorities of a statistical policy office. Major options that have been considered include making the office an independent agency in the executive branch (possibly in the Executive Office of the President), strengthening the Paperwork Reduction Act of 1980 to increase specific requirements, or enacting of new legislation to address statistical policy independently of other issues. Another option that has been considered is the consolidation of the decentralized statistical agencies into a single agency.

A third issue, related to the previous one, is the determination of appropriate staff levels for the statistical policy office. OMB maintains that they currently have sufficient staff to perform this function. Critics contend that the size of the staff has been so reduced in recent years that the current staff cannot stay abreast of the issues and responsibilities that face the office. As the statistical programs of the government have expanded greatly in size and complexity over the last three decades, the size of the office charged with overseeing statistical activities has declined.

A fourth issue is the effect of the burden budget developed by OMB in response to the Paperwork Reduction Act on statistical programs. OMB developed a burden budget for all information collection programs, not distinguishing among different types of programs. The burden budget includes programs related to statistics, program benefits applications, tax filings, and regulatory compliance procedures. Statistical forms account for a very small amount of the total burden. Their inclusion with all other information collection forms implies that the importance of obtaining statistical data may be measured against the need for other program-related information in the development and reduction of departments' burden budgets. A second aspect of the controversy about the burden budget is the lack of distinction between mandatory and voluntary reporting. OMB does not separate the two in the burden budget, thus requiring at least as much reduction in forms which citizens can decline to fill out as in ones they are required to. Critics have suggested that voluntary forms should have more lenient standards applied for clearance. Defenders of the practice have noted that all forms involve an element of burden on the public and, overall, this burden should be reduced.

A final issue is that of the role of the Federal statistical policy office with respect to data programs at the State and local level used to yield national estimates. A number of Federal statistical programs derive their data from State and local sources. In the past, OMB has played an active role in developing and coordinating Federal/State/local cooperative statistical programs. Coordination is important because of the need for data comparability and statistical standards; these issues become more difficult as the number of sources of data increase. At this time, OMB is not involved in overseeing or coordinating these programs.

OMB AND PROCUREMENT MANAGEMENT

Stephanie Smith*

One of the major concerns confronting the 99th Congress, is the charge that an enormous amount of waste, fraud, and abuse is going unchecked in the Federal Government's procurement system. In 1974, at the Commission on Government Procurement's recommendation, Congress established the Office of Federal Procurement Policy (OFPP) within the Office of Management and Budget (OMB) to fill what the Commission considered a void in policy leadership of the Government's procurement process. Congress authorized OFPP for a five-year period to provide overall direction of procurement management and to coordinate programs to improve the quality and performance of procurement personnel. 1/

The Office was reauthorized by Congress for four additional years in 1979, and similarly in 1983. 2/ In addition to OFPP's statutory mandate, President Reagan's Executive Order 12352 of March 17, 1982, initiated a series of Federal procurement reforms which required that OMB establish a system within each agency to manage procurement, simplify the procurement process, develop a professional work force, and increase the use of competition. 3/ Despite these significant efforts at reform, there still exists tremendous controversy regarding how the nearly $190 billion annual Federal procurement budget may best be monitored. 4/

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1/ 88 Stat. 796.

2/ 93 Stat. 648, and 97 Stat. 1325.

3/ U.S. General Accounting Office. Report by the Comptroller General of the United States. Progress of Federal Procurement Reform Under Executive Order 12352. Washington, U.S. Govt. Print. Off., June 17, 1983. p. i.

4/ U.S. Congress. Senate. Committee on Governmental Affairs. Subcommittee on Oversight on Government Management. Hearing. 99th Cong., 1st. Sess., January 23, 1985. Washington, U.S. Govt. Print. Off., 1985. p. 71.

BRIEF HISTORY OF GOVERNMENT PROCUREMENT

The first law regulating Federal procurement, which provided that all purchases for the Army be made by the Treasury Department, was passed by the Second Congress in 1792. 5/ Congress enacted additional legislation in 1861 which required public advertising for Federal procurement except in matters of "public exigency" to enhance competition. 6/ This legislation, as amended in 1910, regulated purchasing activities for the military and the executive branch agencies until 1948. 7/

The most significant developments in procurement policies and procedures occurred during and following World War I and World War II, when existing procurement procedures proved too cumbersome to mobilize the resources necessary for defense purposes. The War Industries Board, established during World War I, temporarily eliminated many procurement procedures. In World War II, the War Production Board eliminated the statutory requirement for formal advertising. 8/

The experiences of World War II provided the impetus for the passage of the Armed Services Procurement Act of 1947 9/, governing military procurement, and the Federal Property and Administrative Services Act of 1949, which established a statutory basis for the procurement procedures of civilian agencies. 10/ In 1959, the General Services Administration (GSA), which had Government-wide responsibility for procurement matters, published the Federal Procurement Regulations (FPR), implementing civilian agency procurement policies and procedures. 11/

5/ 1 Stat. 280.

6/ 12 Stat. 220.

7/ U.S. Congress. Senate. Committee on Government Affairs. Federal Acquisition Act of 1977. Senate Report No. 95-715, 95th Cong., 2d Sess. Washington, U.S. Govt. Print. Off., 1978. p. 6.

8/ Ibid., p. 9.

9/ 62 Stat. 21. The law was actually signed by President Harry S. Truman on February 19, 1948.

10/ 63 Stat. 377.

11/ Federal Acquisition Act of 1977, p. 9.

By 1969, the growth of Federal procurement and dissatisfaction with the complexity of the system prompted Congress to create the Commission on Government Procurement. This twelve member Commission was authorized to study the Federal procurement process and to make recommendations to improve its efficiency. 12/

In its 1972 final report, the Commission found a proliferation of existing procurement rules and regulations in which gaps and inconsistencies abounded. A void in policy leadership, reported the Commission, combined with "a fragmented and outmoded statutory base," were the "root causes of many of the problems that beset" the Federal Government's procurement process. In order to achieve enhanced central policy direction, the Commission recommended the creation of a congressionally mandated Office of Federal Procurement Policy. 13/

OMB'S OFFICE OF FEDERAL PROCUREMENT POLICY

Congress deferred implementation of the Commission's recommendation in order to allow OMB to establish administratively a central procurement policy office. However, OMB's attempt to create such an office was not successful. Because the need for a central arbiter to reconcile agency disagreements on Federal procurement policy still existed, Congress passed the Office of Federal Procurement Policy Act in 1974. 14/

The Act established OFPP in the Office of Management and Budget to provide overall direction of procurement policies, regulations, procedures and forms for executive branch agencies, and to coordinate programs to improve the quality and performance of procurement personnel. The Office was authorized for a five-year period with the fundamental objective of improving the economy, efficiency, and effectiveness of the procurement of property and services by executive agencies. 15/

12/ 83 Stat. 269.

13/ U.S. Commission on Government Procurement. Report of the Commission on Government Procurement. v. 1. Washington, U.S. Govt. Print. Off., December 1972. p. 9.

14/ 88 Stat. 796; and U.S. Congress. Senate. Committee on Governmental Affairs. Reauthorization of the Office of Federal Procurement Policy. Senate Report 98-214, 98th Cong., 1st. Sess. Washington, U.S. Govt. Print. Off., 1983. p. 2.

15/ Ibid.

The OFPP was reauthorized in 1979 for an additional four years with the enactment of the Office of Federal Procurement Policy Act Amendments. Congress reaffirmed the OFPP's fundamental responsibility to promote economy and efficiency in the procurement process, but withdrew OFPP's authority to issue Government-wide procurement regulations by transferring the authority to the procurement regulatory agencies (the Department of Defense, General Services Administration, and the National Aeronautics and Space Administration). The Act established, as OFPP's major priority, the development of a comprehensive proposal for a "Uniform Procurement System (UPS)" in response to criticism that it had not been successful in developing a framework for a system to improve Federal procurement. 16/

The 1979 Amendments also authorized the OFPP Administrator to establish through the Federal Procurement Data Center, a computer-based information system for collecting, developing, and disseminating procurement data which would take into account the needs of Congress, the executive branch agencies, and the private sector. OFPP was also authorized to develop a system of simplified and uniform procurement policies, regulations, procedures, and forms. 17/

During OFPP's reauthorization hearings in 1983, the Senate Governmental Affairs Committee found that, while OFPP had performed well since the 1979 reauthorization, there was still "a strong consensus within the procurement community . . . that there was room for improvement." 18/

The OFPP Amendments of 1983 reauthorized the Office through FY 1987 and restored its regulatory authority, but limited its use to those situations in which the procurement regulatory agencies were unable to agree on, or failed to issue regulations in a timely manner. The Act also strengthened the Administrator's authority to provide overall direction of procurement policy and leadership in the development of procurement systems within executive agencies.

16/ 93 Stat. 648; and U.S. Office of Federal Procurement Policy. Activities of the Office of Federal Procurement Policy. January-December 1984. Washington, Executive Office of the President, Office of Management and Budget, Office of Federal Procurement Policy, 1984. p. 3.

17/ Ibid.

18/ Reauthorization of OFPP, p. 6.

UNIFORM FEDERAL PROCUREMENT SYSTEM

As required by the 1979 reauthorization, OFPP in October 1980 submitted to Congress a proposal for a Uniform Procurement System (UPS) to reform the Government's procurement process. Although OFPP was required to develop a legislative proposal to implement the UPS no later than October 1981, Congress did not receive the proposal until the following February. Even then it was criticized as having several major structural flaws, and failed to meet the objectives established by OFPP's 1980 proposal for a Uniform Procurement System. Its most serious deficiency, in the eyes of congressional critics, was a recommendation for one procurement system for the Department of Defense and another procurement system for the rest of the Federal Government; this provision clearly violated OFPP's statutory mandate to develop a single government-wide procurement statute. Other alleged major defects in the proposal included relaxation of Federal policy on the use of competition in procurement, and failure to provide procedural remedies for contractual disputes between the Federal Government and private contractors. Congress recognized that "the responsibility for the deficiencies contained in the legislative proposal," however, "did not rest solely with OFPP. In fact, given the growing resistance by Federal agencies to OFPP's procurement reform activities, it is a wonder that OFPP managed to submit any proposal to Congress." 19/

Shortly after submission of the UPS propsoal, President Reagan issued Executive Order 12352 on March 17, 1982, establishing the administrative procurement reforms that did not require legislative action. The Executive Order charged OMB and OFPP, working jointly with the agency heads, to provide the leadership, policy guidance, and coordination necessary to achieve procurement reform. It was designed to establish a management system for decentralizing procurement operations and simplifying the procurement process, developing a professional workforce that would provide reform leadership, establishing meaningful standards of performance, and obtaining more effective competition. The 1983 reauthorization of OFPP strengthened the role of OFPP in developing and guiding Government procurement policies, and restored the Office's authority to issue procurement policies and regulations. 20/

19/ U.S. Congress. House. Committee on Government Operations. Office of Federal Procurement Policy Act Amendments. House Report No. 98-146, 98th Cong., 1st. Sess. Washington, U.S. Govt. Print. Off., 1983. p. 5.

20/ Progress of Federal Procurement Reform Under Executive Order 12352, p. 1-2; and Congressional Quarterly Almanac. 98th Congress, 1st Session. 1983. v. 39. Washington, Congressional Quarterly, Inc., 1984. p. 589.

The Office of Management and Budget established an Executive Committee on Federal Procurement Reforms to develop uniform guidelines for implementing the Executive Order. The Committee was to be composed of representatives of the eight largest procuring agencies--Departments of Agriculture, Defense, Energy, Interior, Transportation, GSA, NASA, and Veterans Administration--in addition to the Small Business Administration and the Office of Personnel Management. As set forth in Executive Order 12352, the initial task of the Executive Committee was to develop a model charter setting out primary duties and responsibilities for a "Procurement Executive" with agency-wide responsibility to oversee the development of procurement systems. Since July 1982, when the OMB Director instructed each agency to designate a Procurement Executive consistent with the scope and purpose of Executive Order 12352, fifty such Executives have been appointed. 21/

FEDERAL ACQUISITION REGULATION (FAR)

The 1974 Act establishing OFPP required that its Administrator develop a system of simplified and uniform procurement policies, regulations, procedures, and forms; in January 1978, OFPP initiated policy oversight of the Federal Acquisition Project. The Secretary of Defense, the General Services Administrator, and the Administrator of the National Aeronautics and Space Administration were to be responsible for actual development of the Federal Acquisition Regulation (FAR), eventually issuing the completed regulation jointly under their respective statutory authorities. The FAR, which became effective on April 1, 1984, consolidated Government-wide procurement regulations into a single, simplified regulation in an attempt to reduce the proliferation of agency procurement regulations. The FAR, together with agency supplemental regulations, replaced the Federal Procurement Regulations System, the Defense Acquisition Regulation, and the NASA Procurement Regulation. As set forth in its Forward, the purpose of FAR was to "produce a clear, understandable document that maximizes feasible uniformity in the acquisition process". 22/

21/ Activities of OFPP, January-December 1984, p. 15-16.

22/ U.S. Department of Defense, General Services Administration, and National Aeronautics and Space Administration. Federal Acquisition Regulation; Final Rule. Federal Register. V. 48, No. 182. September 19, 1983. p. 42102.

During Senate testimony, OMB Deputy Director Joseph Wright testified that, since FAR went into effect, it has been responsible for eliminating nearly half of the 6,000 pages of primary procurement regulations now in existence. 23/

OMB CIRCULAR A-76

Another procurement reform initiative was the August 4, 1983, revision of OMB Circular A-76 "Performance of Commercial Activities." Since 1955, the Federal Government has had a policy of relying upon the private sector to provide commercial services and products whenever possible. In 1966, OMB issued its first version of Circular A-76, entitled "Performance of Commercial Activities." OMB issued revisions of Circular A-76 in 1967, 1979, and 1983.

The Circular applies to commercial activities which can be performed by either Federal employees or the private sector. In order to determine the most economical and effective method for the Federal Government to obtain its commercial services, OMB Circular A-76 uses cost comparison studies to analyze the cost of performance by private contract compared to the cost of in-house performance.

Early in his Administration, President Reagan made the implementation of OMB Circular A-76 an important part of his domestic economic program. In April 1981, an OMB memorandum was sent to all executive branch agencies and departments reaffirming A-76 priorities and requiring that the agencies implement the Circular. OMB subsequently sent a bulletin to all executive branch agencies requiring them to submit detailed information on their implementation of A-76. In the current 1983 version, executive branch agencies must review all commercial tasks by September 30, 1987, to determine if private firms can do them more economically. Agencies are allowed to contract out commercial services currently being performed by 10 or fewer Federal employees without performing a cost-comparison study. According to OMB, the revised Circular and accompanying cost-comparison handbook simplify and shorten cost-comparison procedures, while clarifying and strengthening other procedures to facilitate implementation of the Circular. 24/

23/ U.S. Congress. Senate. Committee on Governmental Affairs. Subcommittee on Oversight of Government Management. Oversight of the Grace Commission's Procurement Recommendations. Hearings, 99th Cong., 1st. Sess., January 23, 1985. Washington, U.S. Govt. Print. Off., 1985. p. 2.

24/ U.S. Congress. House. Committee on Post Office and Civil Service. Subcommittee on Human Resources. Implementation of Circular A-76. Hearings, 98th Cong., 2d Sess., September 20 and 25, 1984. Washington, U.S. Govt. Print. Off., 1984. p. 129.

In May 1983, the House Committee on Government Operations reported that OFPP needed to expend more effort in clarifying which functions are inherently governmental and not subject to contracting out. Until this was done, the confusion and uncertainty that existed would continue. Ultimately, the report emphasized, Congress might be forced to legislate a national policy on contracting out, with advice from OFPP on how to formulate such a legislative proposal. 25/

In its FY 86 overview of the Management of the United States Government, OMB conceded that Federal agency compliance with the A-76 program had been poor. According to the report, Federal agency managers had "continued to view it solely as a 'contracting out' policy without giving sufficient regard to cost savings or quality control." 26/ To correct this misconception, OMB, on September 27, 1984, established a Productivity Improvement Program for all agencies to facilitate implementation of Circular A-76. Each agency was requested to review fourteen specific in-house commercial functions to determine which of these services could be performed at less cost by the private sector. Each agency was also required to solicit bids from other Federal agencies that perform similar functions to determine if the work might be done more economically. 27/

COMPETITION IN CONTRACTING ACT

It has long been felt by Congress that any effort to reform the Federal Government's procurement process should begin with a firm commitment to encourage the use of competition in the Federal marketplace. In order to require Federal agencies to increase their use of competition in Federal procurement actions, Congress enacted the Competition in Contracting Act of 1984 (Title VII of the Deficit Reduction Act). 28/ This legislation requires Federal agencies to open their bidding process to all qualified firms wishing to compete for the Government's business by eliminating advertising restrictions and non-competitive bidding procedures.

25/ OFPP Act Amendments, p. 9.

26/ U.S. Office of Management and Budget. Management of the United States Government. Fiscal Year 1986. Washington, Executive Office of the President, Office of Management and Budget, 1985. p. 44.

27/ Activities of OFPP, January-December 1984, p. 17.

28/ 98 Stat. 1175.

It also amended the Office of Federal Procurement Policy Act to establish an advocate for competition in each executive branch agency to implement full competition. Each agency must also establish a computerized file of competitive and non-competitive procurement actions for each fiscal year, excluding small purchases of $25,000.

The legislation amended the Budget and Accounting Act to codify and strengthen current GAO bid protest procedures. On July 18, 1984, when he signed P.L. 98-369, President Reagan issued a statement questioning the constitutionality of certain provisions of the Act and directed the Attorney General to advise executive branch agencies on how to comply with the Act in a manner "consistent with the Constitution." 29/

The Justice Department responded to the President's request by preparing an internal memorandum which concluded that two provisions of the Act pertaining to bid protests were unconstitutional. The first provision authorized GAO to delay the award of a Federal contract pending resolution of protests that questioned the validity of an agency's bid process. The second disputed provision involved the Comptroller General's authority to make binding awards of attorneys' fees and bid preparation costs to successful bid protesters. On November 1984, Attorney General William French Smith officially notified Congress that he believed these provisions were unconstitutional and that they would not be implemented by the executive branch agencies. 30/

On the basis of the Attorney General's opinion and his own authority under the Office of Federal Procurement Policy Act, OMB Director David Stockman issued Bulletin No. 85-5, entitled "Procedures Governing Implementation of Certain Unconstitutional Provisions of the Competition in Contracting Act of 1984." As required by this OMB Bulletin, the executive branch agencies were to "take no action . . . based on the invalid provisions" and, with respect to the "stay" provision, were to "proceed with the procurement process as though no such provision were contained in the Act." 31/

29/ Deficit Reduction Act of 1984. Weekly Compilation of Presidential Documents, v. 20, no. 29, July 18, 1984. p. 1037.

30/ U.S. Congress. House. Committee on Government Operations. The President's Suspension of the Competition in Contracting Act is Unconstitutional. House Report No. 99-138, 99th Cong., 1st. Sess. Washington, U.S. Govt. Print. Off., 1985. p. 6-7; and U.S. Office of Management and Budget. Bulletin No. 85-8. Procedures Governing Implementation of Certain Unconstitutional Provisions of the Competition in Contracting Act of 1984. December 17, 1984. Washington, Executive Office of the President, Office of Management and Budget, 1984. p. 2.

31/ Procedures Governing Implementation of . . . Competition in Contracting Act, p. 1.

The House Government Operations Committee, in a May 21, 1985, report, recommended that funding be withheld from any Federal contracts issued in violation of the Competition in Contracting Act. The Committee also recommended that funding be cut off for the offices of the Attorney General and the OMB Director in retaliation against the Administration's refusal to comply with major portions of the Act. 32/

In May 1985, a U.S. district court judge upheld an earlier ruling by the Third Circuit Court of Appeals in Ameron, Inc. v. United States Army Corps of Engineers which affirmed the constitutionality of the Competition in Contracting Act and ordered all Administration officials to follow the Act's guidelines for the disputed provisions. 33/

OTHER PROCUREMENT REFORM INITIATIVES

Reforming the Federal procurement process was given a high priority early in the Reagan Administration, and was a key element in the President's 1982 proposal for the Management Improvement Program: Reform '88. These reforms included upgrading the procurement workforce, increasing the use of competition, and simplifying the procurement process. A year later, on August 11, 1983, President Reagan issued a memorandum, entitled "Competition in Federal Procurement," which stated that, while efforts had been initiated by Reform '88, more needed to be done to implement procurement reform.

He authorized OFPP's Administrator to issue a policy directive establishing Government-wide restrictions on the use of noncompetitive procurement to be included in the Government's procurement regulations. While contracts with minority businesses and handicapped persons were not affected, the President's Memorandum emphasized that the "unwarranted use of noncompetitive practices must and will be curtailed." 34/

Another of Mr. Reagan's initiatives for management improvement, the President's Private Sector Survey on Cost Control (the Grace

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32/ President's Suspension of Competition in Contracting Act, p. 39-43.

33/ Court Attacks Reagan Contracting Stance as 'Grievous' Disregard of Law. Inside the Administration, v. 4, June 6, 1985. p. 3. See also: Congressional Record, v. 131, October 3, 1985. p. S12521.

34/ Competition in Federal Procurement. Announcement of Presidential Action to Encourage Competition. Administration of Ronald Reagan, 1983. Weekly Compilation of Presidential Documents, v. 19, August 11, 1983. p. 1114-5.

Commission), issued several recommendations regarding procurement in its final 1984 report, namely reducing the proliferation of procurement regulations, encouraging more contracting out, and simplifying the specifications by which the Federal Government describes its procurement needs. According to the Commission, the Office of Federal Procurement Policy's leadership role in the procurement process needed to be strengthened. 35/

The Grace Commission's recommendations on procurement reform were the subject of hearings held by the Senate Governmental Affairs Subcommittee of Government Management on January 25, 1985. Testimony by Joseph Wright, Jr., Deputy Director of OMB, indicated that OMB agreed with the main thrust of the Grace Commissions's recommendations.

OMB supported the Grace Commission's recommendation that the Administration "integrate procurement reform and the role of OFPP into the existing budget/program review processes of OMB." According to Deputy Director Wright's testimony, OMB intends to seek Congressional authorization to make OFPP part of OMB by integrating the Office into OMB's budget and management processes. Such a merger, Wright argued, would strengthen procurement oversight by making it an integral part of OMB's management review and budget process. 36/

CURRENT STATUS OF THE OFFICE OF FEDERAL PROCUREMENT POLICY

Currently, OFPP's $4.5 million annual budget authorization is independent of OMB's, and the Office is headed by an Administrator who reports directly to the Director of OMB. The position is now vacant, with William E. Mathis currently serving as Acting Administrator of OFPP.

Legislation to eliminate OFPP as an independent entity has not yet been introduced. However, the Acting Administrator of OFPP now reports directly to the Associate Director for Management in OMB, who oversees OMB's management review process. Some have suggested that this is an indication that OMB has already undertaken administrative action to accomplish its objective of making OFPP an integral part of its management and review process. 37/

35/ U.S. Congress. Senate. Committee on Governmental Affairs. Subcommittee on Oversight of Government Management. Oversight of the Grace Commission's Procurement Recommendations. Hearings, 99th Cong., 1st. Sess., January 23, 1985. Washington, U.S. Govt. Print. Off., 1985. p. 2.

36/ Ibid. p. 72.

37/ Ibid., p. 54.

OMB AND FINANCIAL MANAGEMENT

Virginia A. McMurtry*

Development of financial management policies for the executive branch, monitoring of agency practices, and improvement of audit and financial systems in the Federal Government are not new concerns for the Office of Management and Budget. However, financial management issues recently have gained much greater visibility and likely have gained a higher priority than some of the other functions performed by OMB.

The following section deals with preliminary matters including definition of some concepts and the purview of this study. The second section provides a brief historical review of financial management in the Federal Government, noting major sources of authority for the exercise of Federal financial management functions as well as the development of OMB's responsibilities. The next section traces recent developments and initiatives, which have served to expand OMB's duties with respect to financial management. The fourth section considers some findings and recommendations for furthering financial management reform in the Federal Government.

Background Concerns

Financial management has been defined in many ways. A very general definition of the term as it has been used over the years in the Federal Government suggests:

> Financial management [is] that part of total management which is concerned primarily with the financial affairs of an organization and the translation of actions, both past and proposed, into meaningful and relevant information for use in the management process. Depending on how an agency decides to set up its financial organization, financial management may encompass all or part of such specific functions as programming, budgeting, accounting, reporting, cash management, control of resources, cost reduction, internal auditing, systems development, and management analysis. 1/

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1/ Joint Financial Management Improvement Program in the Federal Government of the United States. Washington, U.S. Govt. Print. Off., 1967, pp. 14-15. Cited in Association of Government Accountants, Strengthening Controllership in the Federal Government -- A Proposal. Washington, 1985, pp. 5-6.

A broad concept of financial management, including most all those functions enumerated as possible components in the general definition just cited, is becoming more accepted. For example, according to a recent formulation by the General Accounting Office, "Financial management in the federal government encompasses all or part of the processes and functions of planning and programming, budgeting, budget execution and accounting, and audit and evaluation." 2/ In contrasting this modern concept of financial management with the more traditional focus on accounting and auditing, Comptroller General Charles Bowsher has observed:

> For too long, 'financial management' in the federal government has been seen or at least practiced as a rather narrow function involving mainly accountants and budget analysts. . . . This narrow concept of financial management has not served us well, because it has helped perpetuate in agencies fragmented and isolated analyses and reporting that should come together for optimum effect. 3/

The Office of Management and Budget has recently provided an equally comprehensive definition of a "financial management system" as "the sum of all systems -- both manual and automated -- that are used to collect, classify, analyze, and report data on financial transactions and resources, and generate financial information in support of the agency's mission." 4/

While acknowledging the trend toward this modern, inclusive definition of financial management and financial management systems, this report adopts a more traditional approach, focusing particularly on the accounting and internal control components of financial management, along with cash management and credit management concerns. These areas of financial management have all provided the subject for recent legislation, as described below. Moreover, this report was prepared with the other contributions to this volume on the contemporary roles performed by OMB in mind, and with the concern of

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2/ U.S. General Accounting Office. Managing the Cost of Government: Building an Effective Fianacial Management Structure. v. II: Conceptual Framework. Report by the Comptroller General. GAO/AFMD-85-35-A, Feb. 1985. Washington, 1985. p. 2.

3/ Bowsher, Charles A. Governmental Financial Management at the Crossroads: The Choice is Between Reactive and Proactive Financial Management. Public Budgeting and Finance, v. 5, Summer 1985. p. 11.

4/ U.S. Office of Management and Budget. Financial Management and Accounting Objectives, March 1985. p. 1.

covering functions of OMB not considered in other portions of this committee print. This report does not purport to provide a comprehensive review of financial management in the Federal Government. 5/

The distinction between an obligational cash-basis for accounting as compared with an accrual cost-basis is fundamental. From the time government under the Constitution began, the Federal Government has always adhered to the cash-obligational approach. However, there have been frequent calls, especially since World War II, to adopt an accrual based accounting system, at least as a supplement to the obligation-based one. The issue of mandating accrual accounting across the Federal agencies provides a central theme in the continuing debate over financial management reform in the Federal Government, and so merits discussion at the outset of this study.

The two basic elements of Federal accounting as it has always existed are obligations and cash transfers in the form of expenditures and receipts. In contemporary budget terminology, when Congress enacts an appropriations law, budget authority is provided for agencies to obligate funds, usually resulting in eventual outlays of Federal monies. As further explained by Professor Mosher in his study of GAO.

> Cash expenditures and receipts are recorded as of the time the money actually moves. The overall size of the budget for any given year is normally stated in terms of cash expenditures and receipts, and the relation between the two determines the condition of balance, surplus, or deficit. 6/

With this obligational system Congress can easily stipulate precise limits on the amounts to be paid out of a given appropriation account. From the Congressional perspective, the current system can provide a relatively convenient framework of control over operating expenses, such as payment for salaries, where obligation and expenditure occur in close sequence.

5/ For a more comprehensive treatment of financial management in the Federal Government, see GAO's study on Managing the Cost of Government: Building an Effective Financial Management Structure, cited above and discussed further below, as well as private sector studies on the subject, also referred to later in this report.

6/ Mosher, Frederick C. The GAO: The Quest for Accountability in American Government. Boulder, CO, Westview Books, 1979. pp. 161-162.

The problem for the cash-based approach, which is addressed in accrual-based accounting, occurs when there is a long lead-time between obligation and expenditure, such as with construction projects or large-scale weapons procurements: "When these kinds of outlays are substantial, neither obligations nor cash expenditures provide an appropriate base for relating the costs of a program or activity to the actual work performed or results achieved." 7/

The General Accounting Office has defined accrual accounting as

> The basis of accounting under which revenues are recorded when earned and expenditures are recorded when goods are received and services performed even though the receipt of the revenue or the payment of the expenditure may take place, in whole or part, in another accounting period. 8/

The following passage provides a more detailed description of how accrual accounting records costs incurred during a given period rather than actual expenditures:

> Accrued expenditures are the charges incurred during a given period requiring the provision of funds for:
> (1) Goods and other tangible property received;
> (2) Services performed by employees, contractors, grantees, lessors, and other payees; and
> (3) Amounts becoming owned under programs for which no performance or current services are required (such as annuities, insurance claims, other benefit payments, and some cash grants).
> Expenditures accrue regardless of when cash payments are made. 9/

Over the total life of a program costs and cash expenditures are identical, but may well vary in a given year. Supporters of the accrual technique suggest that the picture provided by a cost-based approach as an addition to obligation and cash accounting thus provides essential data with respect to program costs.

7/ Ibid., p. 162.

8/ Cited in Sperry, Roger L. et al. GAO 1966-1981: An Administrative History. Washington, U.S. Govt. Print. Off., 1981. pp. 43-44.

9/ Mosher, GAO, p. 162.

Evolution of Financial Management Functions

The Constitution grants fundamental control over the financial affairs of the Federal Government to the Congress. Article I, Section 8 gives Congress the power to lay and collect taxes, to borrow money on the credit of the United States, and to coin money. Section 9, clause 7 provides for further legislative control, by stipulating:

> No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time. 10/

But from the outset Congress had to rely on the discretion of accounting officers to enforce legislative provisions relating to public expenditures. The Treasury Act of 1789 created the initial framework for financial management in the Federal Government, providing for a comptroller and an auditor in the Treasury Department. Over the years Congress enacted additional laws, generally attempting to strengthen the system by means of more detailed procedures and additional auditors. 11/

The most important effort to reform the Federal financial management structure prior to 1921 occurred in 1894, with the passage of the Dockery Act, which sought "to eliminate excess offices, provide for centralized auditing, institute preliminary examination of records, and simplify accounts." 12/ The system for controlling Federal expenditures (excluding the development of estimates and appropriations) inherited from the nineteenth century has been characterized as follows; financial management was:

> highly centralized; concerned almost exclusively with legality, accuracy, and regularity, with little attention to wisdom,, effectiveness, and efficiency; detailed to the last penny; duplicative, with financial transactions reviewed by at least three different officers -- the administrative officer in the

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10/ For an overview of the history of budgeting from the American Revolutionary period until 1921, see Fisher, Louis. Presidential Spending Power. Princeton, Princeton University Press, 1975. pp. 9-35.

11/ U.S. Congress. Senate. Financial Management in the Federal Government. Senate Document No. 87-11, 87th Cong., 1st Sess. Prepared by the General Accounting Office. Washington, U.S. Govt. Print. Off., 1961. pp. 3-4.

12/ GAO, Managing the Cost of Government, v. II, p. 6.

agency, a disbursing officer, and a Treasury auditor; dictatorial in that decisions by the comptroller of the Treasury were final upon officers in the executive branch; routine, clerical, and unprofessional, for almost none of the comptrollers, auditors, or their staffs had training or experience in accounting; largely independent of either Congress or the president, who didn't much care or if they did, couldn't do much; and slow. 13/

The Budget and Accounting Act of 1921 (42 Stat. 20) provided for important changes in Federal financial management. In addition to creating the Bureau of the Budget in the Department of Treasury, the law etablished the General Accounting Office, responsible to Congress, under the direction of a Comptroller General.

So at the same time BoB was created in Treasury, other financial management functions were consolidated and transferred out of Treasury to GAO, including duties which had been exercised by the Comptroller of the Treasury and the six Treasury auditors, and the duties of the Bookkeeping and Warrants Division involving the keeping of personal ledger accounts of disbursing and collecting officials. Another provision of the 1921 law enpowered the Comptroller General in GAO to prescribe the forms, systems, and procedures for administrative appropriation and fund accounting in the agencies. 14/

The efforts and outcome of the President's Committee on Administrative Management (Brownlow Committee) in the 1930's, including the creation of the Executive Office of the President and the transfer into it of the BoB, have been described elsewhere in this volume. In 1940 Executive Order 8512 prescribed regulations for reporting financial information to the relocated BoB. It also authorized the Secretary of the Treasury to establish and maintain such accounting records as might be necessary to compile the reports and to require the agencies to provide such data related to their financial management operations as the Secretary might stipulate.

The pressures of wartime have repeatedly strained the structures for Federal financial management. 15/ The trend toward centralization in in the Federal financial system begun by the 1921 law and continued during the 1930's was reversed during the World War II period:

13/ Mosher, Frederick C. A Tale of Two Agencies. Baton Rouge, Louisiana State University Press, 1984. p. 19.

14/ Financial Management in the Federal Government, p. 8.

15/ Mosher, A Tale of Two Agencies, p. 18.

It was not possible with pre-World War II technology to maintain centralized control over rapidly expanding government activities during this period of national crisis. The decentralized systems approach to financial management taken during this crisis period has now become part of the tradition and heritage of financial management in the federal government. 16/

The Budget and Accounting Procedures Act of 1950 (64 Stat. 832) served to institutionalize the decentralized Federal financial management structure inherited from the 1940's. For example, each agency head became responsible for establishing and maintaining an accounting system with adequate internal controls, which led to a proliferation of efforts. The law also placed renewed emphasis on the preparation and submission of budget estimates to BoB: "This, along with the requirement to present budget requests classified on an end-purpose or performance basis, helped establish the need for each agency to have its own budgeting system as well." 17/

The 1950 Act transferred responsibility for maintenance of accounting records and production of financial reports back to the Treasury Department. The Comptroller General at GAO was assigned the duty of prescribing accounting principles and standards for the executive agencies, with the proviso that this authority be exercised in such a manner as to permit the agencies to carry out their responsibilities pursuant to the new law. 18/

The 1950 law included in its statement of policy that the BoB Director, the Comptroller General, and the Secretary of the Treasury "conduct a continuous program for the improvement of accounting and financial reporting in the Government." (31 U.S.C. 65). This provision furnished a statutory endorsement for the Joint Financial Management Improvement Program (JFMIP), which was already in existence. The program had its origins in discussions involving the three agencies and staff from the Senate Government Operations Committee in 1947, and was officially announced in a letter to agency heads in 1948, which described the objectives as follows:

16/ GAO, Managing the Cost of Government, v. II, pp. 6-7.

17/ Ibid., p. 7.

18/ For a detailed discussion of the provisions of the 1950 law, see Financial Management in the Federal Government, pp. 80-85.

> The program contemplates the full development of sound accounting within each agency, as a working arm of management, in terms of financial information and control. At the same time it envisions an integrated pattern of accounting and financial reporting for the Government as a whole responsive to executive and legislative needs. 19/

Over the years the JFMIP as coordinator and advocate of financial management reform in the Federal Government has undertaken a variety of activities, such as assisting agencies with experimental projects, sponsoring seminars and training programs in the field, and participating in government-wide studies focused on particular financial problems. But according to one assessment, the most important role of the JFMIP may well be symbolic: "It has been an institutional expression of efforts in the federal government to cooperate in the improvement of financial management practices." 20/

When Elmer Staats became Comptroller General in 1966 he sought to renew the JFMIP, which had become virtually moribund. Mr. Statts met with the other members to discuss ways of reactivating the program, and all agreed upon the need to have more professional accountants in the Federal Government. With this emphasis on recruitment and training it seemed appropriate for the Chairman of the Civil Service Commission to join the JFMIP; today the four principals of the JFMIP include GAO, OMB, Treasury, and Office of Personnel Management (successor to the CSC). 21/ In the 1970's further steps were taken to invigorate the JFMIP. The position of executive director was created, with a small permanent staff, and in 1974 the JFMIP Office was established in GAO, with costs to be shared among the member agencies. 22/

The 1921 and 1950 acts continue to provide the statutory foundation for financial management in the Federal Government, and the functions remain shared among the central agencies (mainly OMB, GAO, and Treasury), and the individual agencies. A recent study of the subject undertaken by Price Waterhouse for the Systems Committee

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19/ Cited ibid., p. 41.

20/ Mosher, The GAO, p. 222.

21/ When some financial management duties of OMB were transferred to the General Services Administration in 1973, the GSA Administrator joined the group of four, but dropped out in 1975 when those functions were moved back to OMB. See ibid., p. 221.

22/ Sperry et al., GAO 1966-1981, pp. 46, 49.

of the President's Council on Management Improvement included an organization chart depicting current responsibilities for financial management functions in the Federal Government (see Figure 1). As summarized in the text of that report, OMB:

> has responsibility for establishing overall policies in the areas of budget, financial management, information resources management, and legislative review/clearance. OMB also establishes certain policies and procedures for budget preparation and control (including governmentwide reporting to central agencies on budget execution) and more recently, information systems. 23/

While financial management remains a shared activity, the role of OMB in the field has expanded due to enactment of recent laws involving cash management, credit management, and internal control and accounting systems. 24/ The following section examines this legislation as well as other reform initiatives originating with OMB.

Recent Initiatives to Improve Federal Financial Management

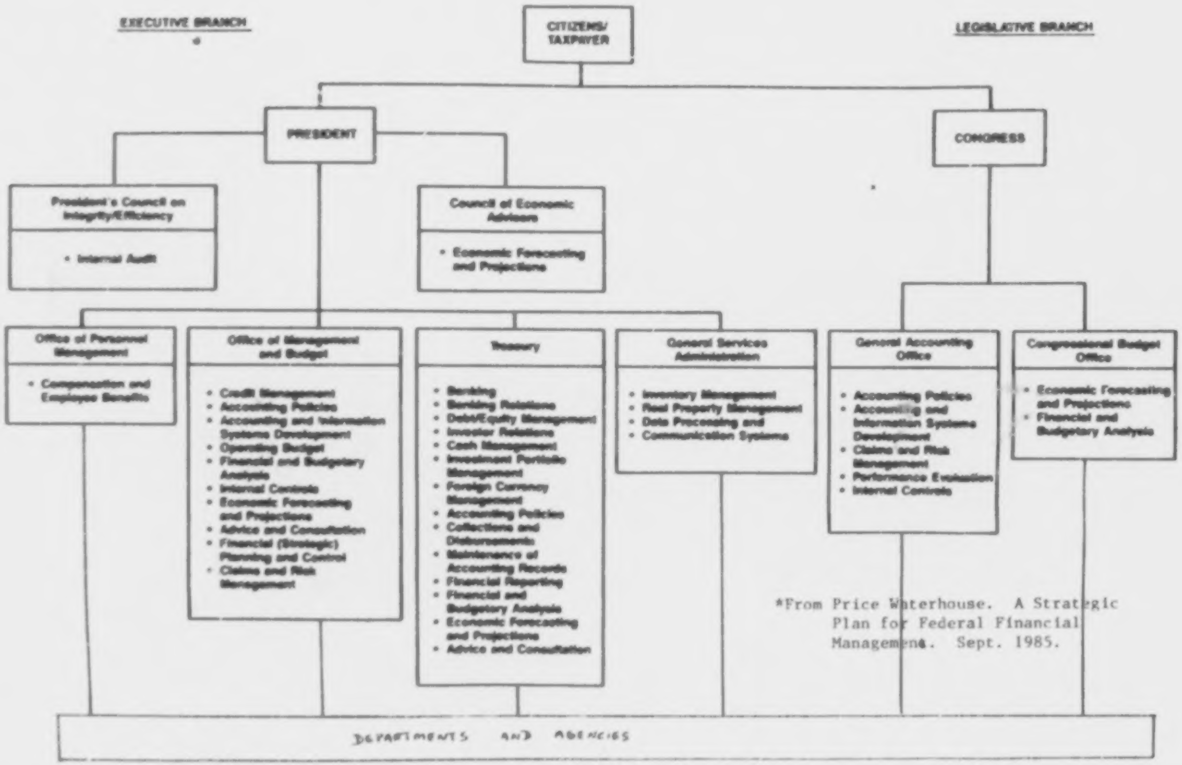
A variety of efforts are underway in the Federal Government to improve financial management. Some of the activity results from efforts to implement recently passed statutes (as described below). Other projects have begun with the impetus from the central agencies or individual departments.

During this time of increasing attention to financial management, an organizational change occurred within OMB. The Financial Management Branch, which had been located in the Budget Review Division, was transferred to the management side of OMB and became a division under the Associate Director for Management. Initially titled the Financial and Accounting Division, the unit is now called the Financial Management Division. Major workload acitivities for the group in 1985, as cited in the Appropriations hearings, reflected the additional duties assigned to OMB as a result of recent laws, and included (in part):

23/ Price Waterhouse. Strategic Plan for Federal Financial Management. Prepared under contract for the Systems Committee, President's Council on Management Improvement. Washington, September 1985. p. III-3.

24/ Other recent laws of significance to Federal financial management but conferring less in the way of new duties for OMB, which are not discussed below, include Inspector General Act of 1978 and the Single Audit Act of 1984.

FIGURE 1.* **FEDERAL GOVERNMENT CENTRAL FINANCIAL MANAGEMENT FUNCTIONS ORGANIZATION CHART — CURRENT**


EXECUTIVE BRANCH
CITIZENS/ TAXPAYER
LEGISLATIVE BRANCH
PRESIDENT
CONGRESS
President's Council on Integrity/Efficiency
• Internal Audit
Council of Economic Advisors
• Economic Forecasting and Projections
Office of Personnel Management
• Compensation and Employee Benefits
Office of Management and Budget
• Credit Management
• Accounting Policies
• Accounting and Information Systems Development
• Operating Budget
• Financial and Budgetary Analysis
• Internal Controls
• Economic Forecasting and Projections
• Advice and Consultation
• Financial (Strategic) Planning and Control
• Claims and Risk Management
Treasury
• Banking
• Banking Relations
• Debt/Equity Management
• Investor Relations
• Cash Management
• Investment Portfolio Management
• Foreign Currency Management
• Accounting Policies
• Collections and Disbursements
• Maintenance of Accounting Records
• Financial Reporting
• Financial and Budgetary Analysis
• Economic Forecasting and Projections
• Advice and Consultation
General Services Administration
• Inventory Management
• Real Property Management
• Data Processing and
• Communication Systems
General Accounting Office
• Accounting Policies
• Accounting and Information Systems Development
• Claims and Risk Management
• Performance Evaluation
• Internal Controls
Congressional Budget Office
• Economic Forecasting and Projections
• Financial and Budgetary Analysis
DEPARTMENTS AND AGENCIES

*From Price Waterhouse. A Strategic Plan for Federal Financial Management. Sept. 1985.

--Implementing the Prompt Payment Act of 1982, developing OMB regulations and monitoring agency practices to insure compliance.
--Implementing the Federal Managers' Financial Integrity Act of 1982 by developing guidelines for internal controls against fraud and abuse and for effective, efficient accounting systems.
--Reviewing and upgrading cash management throughout the Federal Government.
--Updating and improving agency fund controls to prevent over-obligation and overspending of Federal funds.
--Implementating audit policy and assuring management followup of audit findings.
--Assuring agency implementation of the Debt Collection Act of 1982 plans for improving debt collection. 25/

Reform '88 In the fall of 1982 the Reagan Administration announced a new management improvement program. Titled "Reform '88," to reflect a purview of six years, this effort has sought to link progress in management improvement activities with the executive budget process, by assigning a central role to OMB and by utilizing the annual budget review process for purposes of oversight. 26/

25/ U.S. Congress. House. Commitee on Appropriations. Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1986. Hearings before Subcommittee, 99th Cong., 1st Sess., Part 3, Executive Office of the President, April 23, 1985, p. 665.

26/ The Carter Administration had formulated a similar program in 1979, called the Financial Priorities Program. OMB Director James McIntyre, in consultation with the Comptroller General, developed nine initial goals, including the following:
- Get GAO approval of all agency accounting systems;
- Upgrade internal control systems to reduce the risk of fraud, waste, abuse, and inefficiency;
- Build upon the work of the President's Cash Management Project;
- Improve on audit followup and hold down backlog;
- Improve accuracy and timeliness of outlay estimating;
- Improve Federal debt collection by better accounting and prompt and agressive collection action.
- Ensure accurate accounting and tighter control of overtime;
- For grant financing, increase use of letters of credit and electric funds transfers and recover unspent funds;
- Fully implement cost principles and standard administrative requirements to improve grant accountability.

Cited in Sperry et al., GAO 1966-1981, p. 50.

Several of the OMB-led efforts coming under the rubric of Reform '88 involve financial management and complement recently enacted laws. As described further below, the concern with timely payment of bills pursuant to the Prompt Payment Act represents an element of cash management, and the emphasis on improved credit management ties in with the Debt Collection Act. Two other components of Reform '88 designated for immediate attention, improvement of internal controls to reduce waste, fraud and abuse and reform of financial systems, complement FMFIA implementation efforts. 27/

With regard to the improvement of financial management systems, initial emphases in Reform '88 included accounting systems reform, Government-wide cash collection and payments systems reform, and financial operations and controls in agencies. 28/ By 1985, OMB stated that the financial systems reform program embodied four major elements:

*Developing new systems on a generic basis and reducing the proliferation of overlapping, inconsistent systems;
*Clarifying responsibility for systems within the Federal Government and specifying performance standards;
*Focusing top-level attention on financial management systems issues through OMB's annual management reviews; and
*Putting in place a high-level financial and administrative management information system, giving top-level managers the information they need to manage. 29/

Another ongoing effort involves OMB working with GAO on application of Federal financial management standards. OMB Circular A-127 and the supporting guidelines require establishment of a single, integrated financial management system in each agency. GAO has sought to include consolidated financial statements based on the accrual method as an addition to the requirements of A-127, but OMB has disagreed. 30/

27/ For a description of Reform '88, see U.S. OMB. Major Themes and Additional Budget Details Fiscal Year 1984. Washington, Govt. Print. Off., 1983. pp. 271-288.

28/ Ibid., p. 273.

29/ OMB, Management of the United States Government, Fiscal Year 1986, pp. 32-33.

30/ The continuing disagreement between OMB and GAO concerning accrual accounting and consolidated financial statements is further discussed below in the context of a recent GAO report and OMB's (and CBO's) reaction to it.

Cash Management

In November of 1977 President Carter directed a comprehensive review of cash management policies and practices throughout the Federal Government. The initiative was coordinated by the Cash Management Project in OMB. The report issued in August of 1980 suggested that initial changes instituted as a result of this effort saved the Federal Government $450 million a year "by streamlining the way the government collects, processes and deposits its receipts; by controlling more carefully its disbursements; and by reducing its idle cash balances." 31/

The OMB efforts to improve cash management continued under the Reform '88 rubric. Carole Dineen, who designed the cash management initiatives while serving as Assistant Secretary of the Treasury for Fiscal Affairs, commented in a newspaper interview in 1983, "Most of what we have done so far is basic. . . . We're not doing anything that the private sector hasn't done for a long time." 32/

In a 1985 report, OMB provided a very positive review of progress in the cash management area, stating:

> Federal cash management has been improved by modernizing the way the Government collects, processes, and deposits its receipts and makes its payments. . . . The Administration has made a concerted effort to incorporate standard private sector cash management procedures into the way the Government handles its almost $1 trillion annual cash flow. 33/

However, this description must be tempered with the assessments of cash management systems provided in the annual Federal Managers' Financial Integrity Act (FMFIA) reports. According to GAO's analysis of the 1984 reports from major agencies, 12 of 18 reports cited continuing material weaknesses in agency cash management systems. 34/

31/ Office of Management and Budget. Federal Cash Management Project. Strengthening Cash Management in the Federal Government: Achievements and Initiatives. Washington, U. S. Govt. Print. Off., 1980. preface.

32/ Earley, Pete. Cash Management Improvement Program Is Pressed by Agencies. Washington Post, Oct. 18, 1983. p. A15.

33/ OMB, Management of the United States Government, Fiscal Year 1986, pp. 38-42.

34/ U.S. General Accounting Office. Financial Integrity Act: The Government Faces Serious Internal Control and Accounting Systems Problems. GAO/AFMD-86-14. December 1985. Washington, 1985. p. 15.

With regard to one facet of cash management, timely payment of the Government's bills, a new law stipulated OMB's role. Before the passage of the Prompt Payment Act of 1982, 35/ there was no statutory provision mandating the Federal Government to pay its bills on time. A GAO report in 1978 indicated that in the majority of cases Federal agencies were paying their invoices within 30 days of the invoice date, but "in some cases lengthy delays continue to occur." According to the figures provided by GAO, about 40 percent of invoices amounting to some 20 percent of the dollar total were not paid on time. 36/

Although Congress ultimately determined that statutory action was needed, OMB opposed the legislation as unwarranted, contending in a letter for the hearing record in May of 1981 that changes in procurement regulations and improved management would take care of the situation. In the fall of 1981 David Stockman issued an OMB memorandum, outlining specific actions for improving payment practices. 37/

The Prompt Payment Act requires that Federal agencies pay interest on overdue payments to contractors for goods or services. The Act further requires that Government contracts stipulate a due date; otherwise, the 30-day commercial standard applies (unless elsewhere provided for such as with perishable foods). The interest rate is determined by the Secretary of the Treasury pursuant to the Contract Disputes Act. An agency must pay any interest penalty from the appropriation for its operating fund.

35/ Public Law 97-177, 96 Stat. 85, May 21, 1982.

36/ U.S. General Accounting Office. The Federal Government's Bill Payment Performance Is Good But Should Be Better. GAO/FGMSD-78-16. February 24, 1978. Washington, 1978. p. i.
Three years later GAO did a follow-up study, which determined that little improvement had occurred since the 1978 recommendations. See: U.S. Senate. Committee on Governmental Affairs. Delinquent Payments Act of 1981. Report to Accompany S. 1131. Senate Rept. No. 97-302, 97th Cong., 1st Sess. Washington, U. S. Govt. Print. Off., 1981. pp. 2-3.

37/ Ibid., p. 3. U.S. Congress. Senate. Committee on Governmental Affairs. Subcommittee on Federal Expenditures, Research, and Rules. Delinquent Payments to Federal Contractors. Hearing on S. 30 and S. 1131, 97th Cong., 1st Sess., May 13, 1981. Washington, U.S. Govt. Print. Off., 1981. pp. 195-197.

Section 2(a)(1) of the act required the OMB Director to issue implementing regulations; to comply with this duty, OMB Circular A-125 ("Prompt Payment") was issued on August 25, 1982. In an effort to strengthen cash management practices as well as comply with the law, OMB instructed the agencies to make payments "as close as possible to, but not later than, the due date, or if appropriate, the discount date." The law allows for a fifteen day grace period, so interest charges although computed from the 30th day are not imposed until an invoice becomes 45 days overdue.

Oversight of implementation of the Prompt Payment Act, including review of OMB regulations and monitoring of agency practices to insure compliance, continue to contribute to OMB's financial management duties. According to data compiled by OMB from agency reports on payment records, the purpose of the Act has been achieved. "With more than 3.1 million additional payments made in 1984 than in 1983, agencies now pay more than 99% of the Government's bills for goods and services on time. . . . " 38/

However, congressional hearings, most recently by the Senate Committee on Small Business in December of 1985, have received complaints that slow payment problems still exist, especially with contractors of the U.S. Navy. 39/ OMB acknowledged in its first report to Congress under the 1982 law that despite the 99% payment-on-time record, some 180,000 invoices were paid late. 40/

Credit Management. Another area of financial management reform that has been a subject of recent legislation as well as inclusion in the Reform '88 program is the sphere of credit management, with special emphasis on improving Federal debt collection. OMB leadership and GAO reports contributed as well to this reform effort.

In August of 1979 the Debt Collection Project, consisting of both public and private sector members, was established within OMB. The group undertook a comprehensive review of credit management and debt collection practices in Federal agencies. The Project's final

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38/ OMB, Management of the United States Government, Fiscal Year 1986, p. 64.

39/ Sugaware, Sandra. Navy Slow to Pay Bills. Washington Post, Dec. 3, 1985. p. E3.

40/ Cited in Inside the Administration, March 9, 1984. p. 12.

report, including recommendations, was officially released in May of 1981. 41/ OMB also initiated some administrative actions to improve collection processes before Reform '88, and, unlike the situation with cash management as described above, OMB supported the efforts in Congress to enact legislative reforms. 42/

In the latter 1970's GAO also issued a number of reports focusing on the debt collection problem. In 1978 a report on the results of a Government-wide review highlighted problems in accounting for as well as collecting debts. 43/ The following year GAO released a report indicating that in comparison with commercial practices Federal collection procedures were slow, expensive, and ineffective. 44/

The Debt Collection Act of 1982 45/ authorized the use by the Federal Government of various collection tools available in the private sector, such as referring information on Federal debtors to credit bureaus, assessing interest and penalties on delinquent Federal debts, permitting Federal agencies (except the Internal Revenue Service) to contract with private collection agencies, and offsetting a Federal employee's salary for overdue Federal loan payments. A provision of the Deficit Reduction Act of 1984 authorized offsetting of Federal tax refunds for payment of delinquent debt owed the Federal Government.

41/ Office of Management and Budget. Debt Collection Project. Report on Strengthening Federal Credit Management, January 1981. Washington, U.S. Govt. Print. Off., 1981.

42/ For an overview of events leading up to the passage of the Debt Collection Act of 1982, see: Library of Congress. Congressional Research Service. Federal Debt Collection: Recent Efforts to Strengthen Recovery Procedures, by Virginia A. McMurtry. Dec. 1, 1982. Issue brief 82123. Washington, 1982.

43/ U.S. General Accounting Office. The Government Needs to Do a Better Job of Collecting Amounts Owed by the Public. GAO/FGMSD-78-61, Oct. 20, 1978. Washington, 1978.

44/ U.S. General Accounting Office. The Government Can Be More Productive in Collecting its Debts by Following Commercial Practices. GAO/FGMSD-78-59, Feb. 23, 1979. Washington, 1979. Also see U.S. General Accounting Office. Unresolved Issues Impede Federal Debt Collection Efforts -- A Status Report. GAO/CD-80-1 Jan. 15, 1980. Washington, 1980. p. i. A listing or recent GAO reports on debt collection was included as an appendix, pp. 14-17.

45/ Public Law 97-365, 96 Stat. 1749, Oct. 25, 1982.

GAO issued another study on debt collection in 1983, noting that the Federal debt collection situation was improving, even before the implementation of the 1982 law. The contributions of OMB in emphasizing the problem and providing administrative leadership were noted. 46/

OMB oversight of agency plans to improve collection, including review and evaluation of quarterly reports and preparation of an annual report on the subject to Congress as required by the 1982 law, comprise a continuing responsibility. A recent OMB report highlighted its ongoing activities to enhance credit management, including the use of the credit budget, use of credit bureaus, automated collection systems, collection of Federal employee delinquent debt, portfolio sales, loan origination fees, and income tax refund offsets. 47/

But latitude for improvement in Federal debt collection remains. In a memorandum dated January 2, 1986, OMB Deputy Director Joseph Wright reminded the agencies that the General Services Administration has contracted with four collection agencies to make available private collection services to all agencies. He noted that as of June 30, 1985, non-tax delinquent debt owed the Government amounted to $23.5 billion. 48/ He continued: "We [at OMB] are disappointed at the lack of progress many agencies are making to identify seriously delinquent debt and turn it over to the contractors. 49/ Data in the 1984 FMFIA reports also suggested need for further improvement, with 13 of 18 agencies included in the GAO review citing material weaknesses in their grant, loan, and debt collection management systems. 50/

46/ U.S. General Accounting Office. Significant Improvements Seen in Efforts To Collect Debts Owed the Federal Government. GAO/AFMD-83-57, April 28, 1983. Washington, 1983. p. 6.

47/ OMB, Management of the United States Government, Fiscal Year 1986, p. 38-42.

48/ For data on receivables as of June 30, 1985, by agency, see: U.S. General Accounting Office. Debt Collection: Information on the Amount of Debts Owed the Federal Government. GAO/AFMD-86-13FS. Washington, 1986.

The total amount of nontax delinquent debt owed the Federal Government has actually increased from around $14 billion at the end of FY 1982 to about $23 billion at the end of 1984. The improvement in agency reporting is probably responsible for part of the apparent increase. Total receivables have also increased, so delinquencies are not necessarily rising as a percent of total payments due.

49/ OMB, use of Private Collection Agencies, Jan. 2, 1986, M-86-11.

50/ GAO. Financial Integrity Act, p. 15.

Internal Controls and Accounting Systems. A recent report by the Association of Government Accountants summarized the various manifestations of consensus on the need for improvements in the area of Federal accounting systems: "Legislation, Executive orders, GAO reports, OMB circulars, blue ribbon commissions, and reports of the Inspectors General all have documented the need for improving accounting and financial management information systems in the federal government." 51/

The passage of the Federal Managers' Financial Integrity Act (FMFIA) in 1982 52/ represented a major development in this continuing effort. The FMFIA amended the Accounting and Auditing Act of 1950 (Part II of title I of the Budget and Accounting Procedures Act), to strengthen provisions regarding internal controls in Federal agencies to combat fraud, waste, and abuse in government operations. The law requires each agency to establish and maintain its internal accounting and administrative controls in accordance with standards prescribed by the Comptroller General to help assure that (1) obligations and costs comply with applicable law; (2) all funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and (3) revenues and expenditures applicable to agency operations are recorded and properly accounted for. The law further requires each agency to prepare an annual report to the President and the Congress on the status of its internal control and accounting sytems.

OMB is given responsibility for developing and issuing evaluation guidelines for the agencies to use in the process of the annual review of their internal accounting and administrative control systems. Pursuant to FMFIA, supplemented by the Reagan Administration's Reform 88 program, OMB has issued several directives to agency heads.

OMB issued Circular No. A-123, "Internal Control Systems," in October of 1981, which promulgated internal control standards and a system of agency responsibilities and requirements. This effort by OMB to direct agency attention to the many instances of fraud, waste, and abuse of Government resources and mismanagement of Federal programs resulting from weaknesses in internal controls of course predated passage of the FMFIA. In December of 1982 OMB issued guidelines, as mandated by provisions in the FMFIA, titled "Guidelines for the Evaluation and Improvement of and Reporting on Internal Control Systems in the Federal Government." The 1982 guidelines were designed specifically to assist the agencies in conducting the evaluations and preparing their reports pursuant to the FMFIA. The

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51/ Association of Government Accountants. Strengthening Controllership in the Federal Government -- A Proposal. Washington, May 1985. p. 5.

52/ Public Law 97-255, 96 Stat. 814, Sept. 8, 1982.

guidelines were followed in August of 1983 by a revised version of OMB Circular No. A-123, which prescribed "policies and standards to be followed by the executive departments and agencies in establishing, maintaining, evaluating, improving, and reporting on internal controls in their programs and administrative activities."

OMB Circular A-127, "Financial Management Systems," was issued in December of 1984. This circular stipulates policies and procedures for financial management systems and requires agencies to issue an implementing order as well as to develop an inventory of financial management systems. This was followed in March 1985, by an OMB manual titled "Financial Managment and Accounting Objectives," and relating to design of new systems as well as operation of existing ones. Additional directions came from OMB in May 1985, with "Guidelines for Evaluating Financial Management/ Accounting Systems," which mandated a five-year system plan to be included in the fiscal year 1987 budget and management submission, in addition to the annual report on accounting systems required by the FMFIA.

The General Accounting Office issued a report on the first year of implementation of FMFIA in 1984, which summarized the findings and recommendations contained in nearly two dozen GAO reports on individual agencies. The report noted that in the initial efforts at implementation, OMB had played "an active role, providing guidance and central direction to the program." 53/ The report also suggested the need for additional guidance from OMB in evaluating automated data processing (ADP) and for better criteria in preparing the annual reports required by FMFIA.

The 1984 GAO report concluded that the agencies had made a good start in assessing their internal control and accounting systems, but that the first year was clearly a learning experience, with the task of evaluating existing systems still incomplete, not to mention the massive task of correcting the problems identified. With respect to the findings reported by the agencies in the first annual statements, GAO noted that "virtually every major agency disclosed material weaknesses in internal control and accounting systems which cover the spectrum of government functions and programs." 54/

In December of 1985 GAO issued another report on FMFIA implementation governmentwide, based upon a review of the information in the agency submissions for the second annual FMFIA statements as well as inspector general audits and other GAO investigations. The summary of results in the 1985 GAO study highlighted some of the continuing problems:

53/ U.S. General Accounting Office. Implementation of the Federal Managers' Financial Integrity Act: First Year. GAO/OCG-84-3. Aug. 24, 1984. Washington, 1984. p. ii.

54/ Ibid., pp. i-ii.

> Agency reports under the Federal Managers' Financial Integrity Act, inspectors general audits, and GAO reviews continue to show that weaknesses and breakdowns in agency systems of internal control frequently result in wasteful spending, poor management, and losses totalling billions of dollars. In some cases, outright fraud has occurred, and, in others, the government's ability to carry out crucial public services has been hampered. Serious internal control problems continue in a wide range of areas, such as weapons systems procurement, social security, debt collection, property management, and automated data processing (ADP). Adding to the government's dilemma is the overall poor condition of agency accounting and financial management systems. Many systems neither conform to the Comptroller General's accounting requirements nor provide the financial information needed to manage the government efficiently and effectively.
>
> While agencies generally identified their problems, their annual reports to the President and the Congress do not always provide an accurate assessment of the overall status of their systems. Agencies' programs to evaluate their internal control and accounting systems have improved since 1983 but need further strengthening to ensure that existing weaknesses are corrected, and additional weaknesses are identified. 55/

The 1985 GAO report, in noting that serious and long-standing internal control problems remain, analyzed the data from the agency statements regarding material weaknesses in the respective internal control systems: "The agencies we reviewed reported 335 material internal control weaknesses in their 1984 statements that were not identified in 1983. The 1983 statements identified 467 weaknesses." 56/

GAO in the 1985 report also highlighted the continuing widespread weaknesses in accounting and financial management systems. Such problems seem especially troubling in times of budget retrenchment and attempted deficit reduction. As explained in the report:

> Timely and accurate information from agencies' accounting and financial mangement systems is necessary to enable managers to analyze their operations and decide how to control, conserve, protect, and use resources. Data

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55/ U.S. General Accounting Office. Financial Integrity Act: The Government Faces Serious Internal Control and Accounting Systems Problems. GAO/AFMD-86-14. December 1985. Washington, 1985. pp. 2-3.

56/ Ibid., p. 15.

inaccuracy and incompleteness continue to be a major weakness in government accounting systems, and billion of dollars are not being adequately acccounted for, managed, and controlled. 57/

Particularly striking evidence of the need for improvement in agency accounting systems came from figures in this report concerning the status of systems' approval. As mentioned above, the 1950 Budget and Accounting Act stipulated that agencies were to establish and maintain accounting systems in conformance with requirements prescribed by the Comptroller General. But the 18 major agencies reviewed by GAO for the 1985 study had reported as of the end of 1984 a total of 427 accounting systems, less than half of which were in conformance with (or were known with certainty to be in conformance with) the Comptroller General's accounting principles, standards, and related requirements. One of the examples cited by GAO to illustrate the continuing problems came from the report of the Department of Defense: "Defense reported that 86 of its 150 accounting systems did not conform with the Comptroller General's requirements." 58/

In commenting on the 1985 report by GAO on FMFIA implementation, OMB indicated full agreement with GAO regarding the "high priority that must be placed on strengthening internal controls and accounting systems and the need for sustained agency improvement efforts." 59/ However, OMB continued to disagree with GAO concerning the need to strengthen guidance on the annual year-end reporting statements, contending that OMB had already provided supplemental guidance about this point and that the framework proposed by GAO would unnecessarily burden the agencies with additional paperwork. 60/

Recent Studies on Financial Management Reform

Despite the recent legislation and administrative initiatives underway to improve financial management in the Federal Government, serious problems remain. There appears to be general agreement that the decentralized administrative structure for financial management in the Federal Government contributes to the difficulties. Recent studies have considered problem areas in the Federal financial management framework and suggested recommendations for organizational changes. Such recommendations from three nongovernmental sources are examined below.

57/ Ibid., p. 17.

58/ Ibid., p. 18.

59/ Ibid., p. 5.

60/ Ibid., pp. 42-44.

The final study discussed below, a recent report by the General Accounting Office, does not focus specifically on organizational issues but rather on a conceptual framework for reform of financial management.

President's Private Sector Survey on Cost Controls (Grace Commission). One of the forty-seven reports issued by the Grace Commission following its study of government operations dealt with financial management in the Federal Government and concentrated on four areas -- identifying the true size of the Federal budget, accounting systems, cash management, and debt collection. The 1983 report of the subcommittee on Financial Management contained three general recommendations with regard to financial management:

(1) The implementation of improved automated accounting and financial information systems across Federal agencies to increase the availability and usefulness of management data.
(2) Incentives need to be better utilized to secure improvements in the performance of financial management activities.
(3) Strengthen financial management by creating a central financial function within the Federal Government. 61/

In discussing the third recommendation about central financial leadership the subcommittee reviewed the situation of financial management as a shared function and the resulting dispersal of responsibility within the executive branch as well as between the executive agencies and GAO. According to this report, following its creation in 1970 OMB was intended to assume the role paralleling the centralized financial management seen in the private sector, but the objective remains unrealized:

> OMB continues to be preoccupied with the annual budgetary process, which claims most of its resources and drives all of its other activities. Consequently, there continue to be significant shortcomings in the Federal Government's other financial management operations. 62/

As a remedy to the organizational difficulties as well as the weaknesses in information systems and motivational incentives outlined in the report of the financial management subcommittee, the Grace Commission called for the establishment of a Financial Management Department within the proposed new Office of Federal Management. This recommendation appeared earlier in the report of

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61/ President's Private Sector Survey on Cost Control. Management Office Selected Issues. v. III. Report on Financial Management in the Federal Government. Winter 1983. pp. ii-iv.

62/ Ibid., pp. v, vi.

the Federal Management Systems Task Force, with that group also suggesting that the new financial management office take the initiative in assuring the incorporation in all agencies of an adequately staffed comptrollership function. 63/

Price Waterhouse Report. Another recent study of Federal financial management, prepared under contract for the Systems Committee of the President's Council on Management Improvement, was issued in 1985. 64/ The report was based upon over forty interviews with Federal officials, primarily senior financial management staff. In devising a strategy for improving financial management, the report suggested three major components:

1. Organizational responsibilities which encourage effective governmentwide and department/agency leadership and accountability and which support the need for continuity in direction and oversight.

2. Financial management systems capable of providing timely, accurate, consistent and comparable information to support the information needs of managers at all levels and to satisfy the government's stewardship responsibility. Such systems should be developed, implemented, and operated in the most cost-effective manner.

63/ President's Private Sector Survey on Cost Control. Report on Federal Management Systems. Spring-Fall 1983. pp. 75-76.

The advantages and disadvantages of creating a separate Office of Federal Management have been assessed elsewhere in this volume. See Benda and Levine, OMB's Management Role: Issues of Structure and Strategy.

The appropriate division of financial management responsibilities between the proposed Office of Federal Management and a reconstituted Federal budget agency poses special concerns, however. While the Financial Management Division has resided on the "management side" of OMB for a few years now, the function was a part of the Budget Review Division for many more years. And the modern conception of financial management, as described above, tends to subsume the budget process as one of its components.

64/ Strategic Plan for Federal Financial Management. The study commenced early in 1985, with the support of Arlene Triplett, then Associate Director for Management at OMB, and Terrence Golden, then Assistant Secretary for Administration, Treasury, and Chair of the Systems Committee. Later in the year Mrs. Triplett left OMB for the private sector and Mr. Golden became head of the General Services Administration. The subsequent Associate Director for Management at OMB, Carole Dineen, likewise was interested in the project. The final report, released in September of 1985, was officially endorsed by the Systems Committee in November. This writer's understanding of the written report was supplemented by a telephone conversation with Ellie Clark, project director for the study at Price Waterhouse.

3. Financial management personnel who are competent and motivated to direct and conduct the government's financial management program. 65/

Our interest here is in that portion of the study dealing with organizational responsibilities. The Price-Waterhouse survey found that the policies and procedures contained in OMB Circulars, Bulletins, and Memoranda, the GAO Accounting Principles and Standards, and the Financial Management Circulars by the Treasury Department are "frequently not consistent, and the reporting requirements often conflict or are duplicative." In addition to inconsistencies in financial management policies, interviewees noted unclear and uncoordinated delineation of responsibilities among the central agencies and a lack of coordination for improvement initiatives. Varying organizational structures in the line agencies to provide for financial management and the absence of direct linkages between the central agency leadership and line managers also contributed to the situation of ineffective oversight of agency compliance with directives, policies, and so on. 66/

Given this assessment of the current situation, the first recommendation with regard to the organizational issues posited: "Establish within the central organizations clearly defined responsibilities for governmentwide financial management leadership and oversight which eliminate fragmentation in central agency responsibilities." 67/ In an attempt to facilitate such an arrangement, the report suggested that Federal financial management duties be divided into three categories -- policy oversight, governmentwide operational leadership and oversight, and day-to-day operational management (see Figure 2).

The policy oversight functions, ensuring consistency of financial management policies with each administration's objectives, represent the major focus of past and current OMB involvement. Accordingly, the report concluded: "We recommend that financial POLICY OVERSIGHT should continue to be the purview of the OMB. This is consistent with the views expressed by our interviewees and with current responsibilities." 68/

65/ Price Waterhouse. Stretegic Plan for Federal Financial Management. p. 4.

66/ Ibid., pp. III - 4-8.

67/ Ibid., p. III-8.

68/ Ibid., p. 6.

FIGURE 2.*

SUMMARY OF RECOMMENDED MAJOR FINANCIAL MANAGEMENT RESPONSIBILITIES

(OMB) Policy Oversight	(TREASURY) Operational Leadership and Oversight	(DEPARTMENTS/AGENCIES) Operational Management
1. Evaluate improvement programs	1. Direct and oversee the planning and implementation of governmentwide financial management improvements	1. Implement the governmentwide financial management conceptual framework
2. Review new financial management policies	2. Prescribe a conceptual framework for financial management systems (objectives, standards, policies, principles and reporting practices)	2. Implement prescribed personnel practices
3. Review financial management budget requests	3. Develop governmentwide reporting concepts, policies and procedures. Prescribe common definitions and consistent classifications	3. Manage the financial management program organizationwide
4. Review related legislative change recommendations	4. Coordinate a governmentwide program of evaluations to ensure financial management practices and systems comply with applicable laws, policies and regulations	4. Operate financial management systems in an efficient manner, in accordance with prescribed standards
	5. Provide technical advice and consultation to department/agencies	5. Prepare organizationwide long range plans for financial management improvements
	6. Prescribe standards, policies and practices to acquire and retain competent financial management personnel	6. Report on the organizations results of operations and financial status in accordance with prescribed reporting objectives, standards and principles
	7. Coordinate with other central government agencies (OMB, OPM, GSA) on financial management matters	
	8. Establish efficiency measures for operating systems	

*From Price Waterhouse. Strategic Plan for Federal Financial Management. Sept. 1985.

The Price Waterhouse study further recommended that the government-wide operational leadership and oversight role be placed in the Department of Treasury. While observing that "the key point is not necessarily the location of the organization, but that these significant responsibilities be clearly assigned and then implemented effectively," the report noted that in their survey, 33% of the respondents favored Treasury, 21% believed that operational leadership should be assigned to OMB, and 21% advocated placement into some other unit within the Executive Office. 69/ According to the report, advantages of the Treasury locale for the operational leadership and oversight role include:

> (1) these responsibilities are similar to those currently assigned to Treasury; (2) Treasury has a more operationally focused staff because of its current responsibility for central accounting and governmentwide reporting; (3) the ability to enhance the stature of financial managers would be provided through the establishment of an organization fully focused on financial management; and (4) Treasury has demonstrated a willingness to assume these responsibilities by including them in their long range strategic plan. 70/

With respect to the third component of major financial management functions for the Federal Government, the study recommended that "all responsibilities associated with OPERATIONAL MANAGEMENT, i.e., the day to day management of the department and agencies financial management program and systems remain the responsibility of the departments." 71/

The Price Waterhouse report acknowledged that historically GAO has played "a major role in defining financial management system requirements." GAO has continuing statutory responsibilities for promulgating accounting principles and standards and approving accounting systems. GAO also exercises important oversight of financial management systems and practices through its agency audits. While these roles will remain, the report also suggested that GAO's involvement might well change if OMB and Treasury assumed the new duties as discussed above. In such a case GAO in the future could

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69/ Any reformulation of functional responsibilities between agencies can unleash the proverbial "turf battle." But according to Price Waterhouse staff familiar with the report, there was no intent to downgrade the role of OMB in financial management relative to that of Treasury. Rather OMB would retain its ultimate policy role, while being relieved of operations oversight duties for which it is inadequately equipped to deal at present.

70/ Ibid., p. III-9.

71/ Ibid., p. III-11

"emphasize its audit role to a greater degree to ensure the Executive Branch's promulgations are effectively implemented government-wide." 72/

AGA Report. The Association of Government Accountants (AGA) recently issued a report, reviewing the state of financial management in the Federal Government and recommending enactment of a draft proposal titled the "Federal Controllership Act." 73/

The AGA report cited various factors contributing to the urgency of reform, beginning with the sheer size and complexity of the Federal budget. The report highlighted many of the same problems cited in other studies, including dated and unresponsive internal controls and financial systems and the various central agencies sharing responsibilities for financial management, resulting in a dispersion of authority that "weakens accountability and the continuity of improvement initiatives." 74/

In particular, with regard to accountability, the AGA report noted the detrimental effects of policy decentralization and fragmentation: "So many layers of personnel and processes, both manual and automated, surround any given financial transaction in government that the individual managers may lose a sense of personal responsibility for the outcome." 75/

Moreover, according to the AGA report, the diversity of policies, procedures, practices and systems at the departmental (and lower) levels "precludes consistent financial management or uniform measuring and reporting on the activities and expenditures of government." Finally, the AGA report mentioned the personnel weaknesses in the present system, epitomized by the average tenure of only eighteen months for assistant secretaries responsible for financial management. 76/

72/ Ibid., p. 8. Other recommendations of the Price Waterhouse study with regard to organization of financial management called for creating a Comptroller in each agency to oversee a series of functions relating to financial management and establishing a Financial Management Council under the leadership of the Treasury Department, consisting of the agency Comptrollers.

73/ AGA, Strengthening Controllership in the Federal Government--A Proposal. Washington, May 1985. 20 p. 3.

74/ Ibid., p. 2.

75/ Ibid., p. 3.

76/ Ibid., p. 2.

The draft legislation recommended in the AGA report calls for establishment of an Office of Controller within the Executive Office of the President (EOP), "with government-wide responsibility for assuring that the many departments, agencies, and offices of the federal government uniformly and consistently perform the financial management function." Major responsibilities of the new EOP Controller would include "coordinating and monitoring the development of Executive agency accounting and financial management systems, in order to establish parity among such systems and to ensure consistency with the principles and standards established by the General Accounting Office." The AGA draft bill also provides for establishment of an assistant secretary-controller position in every agency, "with financial management duties, responsibilities and authorities uniformly defined and fixed for each of these federal organizations." Various other provisions relating to enhancing these agency-level controller positions are stipulated in the proposal as well. 77/

GAO's Managing the Cost of Government Report. GAO released a major study on Federal financial management in February of 1985. The GAO report was issued in two parts: Volume I provided an overview of major problems, while Volume II contained a more detailed discussion of the conceptual framework for financial management reform.

The report highlighted several problem areas, indicating the need for major overhaul of the system. These included unreliable and incomplete financial management information, inadequate linkages between budgeting and accounting, inattention paid to comparing budgeted activity with actual results, preoccupation with fund control, inadequate disclosure of assets, costs, and liabilities, and antiquated and fragmented financial management systems.

Successful reform, according to the GAO report, will require a comprehensive approach in contrast to past efforts that have been partial or piecemeal. The reform effort should be "government-wide in scope, serving the needs of both Congress and the executive branch, by ensuring that consistent data are available across agency and department lines." 78/

A very inclusive concept of financial management was employed in the GAO report. The conceptual framework for the new financial management structure consisted of four key elements of reform:

77/ Ibid., p. 1.

78/ U.S. General Accounting Office. Managing the Cost of Government: Building an Effective Financial Management Structure. v. I: Major Issures. Report by the Comptroller General. GAO/AFMD-85-35, Feb. 1985. Washington, 1985. p. 2.

strengthened accounting, auditing, and reporting; improved planning and programming; a streamlined budget process; and systematic measurement of performance.

According to the report, "Effective financial management must start with complete, reliable, consistent, and timely information." With strengthened accounting, auditing and reporting, Federal financial systems should produce such data, with reliability to be assured through effective auditing procedures. Improved planning and programming is necessary, so that the modern system can provide a structured process for considering major national issues, including identification of alternative courses of action and projection of probable consequenes. A streamlined budget process should be integrated with the other phases of financial management. Reform must seek to eliminate unnecessary obstacles to action and include operating procedures designed to assist decision makers in facing difficult budget choices. Systematic measurement of performance is essential, so that the financial management system furnishes consistent data on the results of government activities as well as their costs. 79/

As further explained by the Comptroller General:

> Taken together, these four elements, accompanied by adequate internal controls, would form the conceptual foundation of a new financial managment structure. Putting a new structure in place and making it work, however, will also require systems development efforts, organization changes, and investments in people and computer equipment. 80/

OMB faulted the GAO report as a whole for being too abstract and lacking in immediately useful applications. As former OMB Director David Stockman noted in a letter of commentary on the GAO proposal, prepared at the request of Congressman Jack Brooks, Chairman of the House Government Operations Committee: "We [at OMB] are disappointed in the [GAO] report in that we had hoped it would contain specific, practical proposals that would be useful to the President and the Congress. We do not believe that it does." 81/

The Congressional Budget Office, in replying to a similar letter from Congressman Brooks requesting evaluation of the GAO report,

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79/ Ibid., pp. 2-3.

80/ General Accounting Office. Comptroller General. Letter from Charles A. Bowsher to Jack Brooks, Chairman of the House Committee on Government Operations. Dec. 11, 1985. p. 3.

81/ Office of Management and Budget. Letter from David A. Stockman to Jack Brooks, Chairman of the House Subcommittee on Legislation and National Security. May 1, 1985. p. 1.

also disagreed with particular GAO recommendations. Two matters receiving emphasis in the GAO report and central to discussions of financial management reform elicited particularly strong differences of opinion among GAO, CBO, and OMB--adoption of accrual cost-based budgeting and accounting, and production of consolidated financial statements for the Federal Government. 82/

Before turning to these points of disagreement, it should be noted that both CBO and OMB expressed agreement with GAO's far reaching proposal calling for integration of agency budget and accounting systems. The CBO appraisal conveyed strong support for the idea and noted further:

> The development of integrated budget and accounting systems by Federal agencies would improve the overall quality of government financial management. From the Congressional perspective, it would enhance the timeliness and the accuracy of all budget information. Since a number of agencies are already introducing such systems, this objective could be fulfilled by targeting efforts on agencies whose systems are still inadequate. 83/

OMB likewise acknowledged the need "to integrate systems further and, particularly, to strengthen the ties between budget formulation, budget execution, and accounting." Mr. Stockman cited OMB Circular A-127 on Financial Management Systems and supporting publications as steps toward this goal. 84/

The nature of accrual accounting as compared with cash-based accounting was described above. GAO has been advocating adoption of cost-based acounting for many years. The Presient's Commission on Budget Conceps in 1967 also called for accrual accounting in the Federal Government, and the Joint Financial Management Improvement Program has been working for its adoption as well. 85/

82/ These two subjects were among six recommendations in the GAO report, judged to be the "essence of the proposal" in the analysis of it provided by CBO. Other recommendations cited as central by CBO included integration of budget and accounting systems, return of off-budget spending into a unified Federal budget, streamlining of the budget process, and separation of capital and operating budgets. See Congressional Budget Office. Letter from Rudolph G. Penner to Jack Brooks, Chairman of the House Subcommittee on Legislation and National Security. July 2, 1985. p. 1.

83/ Ibid., p. 2.

84/ Letter from David Stockman to Jack Brooks, p. 2.

85/ Mosher, the GAO, p. 219. The primary recommendation of the Commission, calling for a unified Federal budget, was adopted.

The 1985 GAO report suggested several benefits for management concerns to be derived from accrual-based budgeting when it is properly used:

> - Accrual-based budgets provide management with a complete financial projection of proposed operations.
> - Accrual-based budgets provide management with the timely information it needs to evaluate financial plans, the real cost of activities, and the use of all available resources.
> - Accrual-based budgets provide a basis for using an operating plan and a standard in measuring actual performance and in determining unit costs.
> - Accrual-based budgets provide a time-phased basis for controlling expenses and disclosing unfunded program costs. 86/

CBO expressed "some reservations" regarding the accrual accounting proposal. While acknowledging that this procedure could have a beneficial effect to ensure that complete information on the full cost of decisions were recognized by Members of Congress at the time approval was voted, CBO suggested that the utility of accrual cost concepts "varies greatly across different types of federal programs." Many Federal activities involve transfer payments or salary accounts, for which the adoption of accrual cost concepts would possibly raise administrative costs without much benefit. But for government loan and retirement programs or other activities in which long term costs are not accurately measured by cash outlay figures, the accrual approach "would appear to fill some of the the information shortcomings in the current system." 87/

CBO also questioned the feasibility of adopting the accrual method. Long-term assumptions about the national economy and specific program performance are necessary for measuring accrued costs:

> These assumptions and their significance for the estimates could be explained in special analyses, but their use would introduce unrecognized imprecision into the budget. For the past 15 years, the Treasury and Office of Management and Budget have attempted to improve accrual measures with little success. The technical issues have not proved to be resolvable. 88/

86/ GAO, Managing the Cost of Government, v. II, p. 46.

87/ Letter from Rudolph Penner to Jack Brooks, pp. 2-3.

88/ Letter from Rudolph Penner to Jack Brooks, p. 3.

OMB has strongly disagreed with the GAO proposal that Federal financial management undertake "a wholesale move from a cash to accrual (or cost) basis." According to Mr. Stockman, "GAO's recommendation in this regard flies in the face of the experience of slightly more than a decade ago, when such a move was considered very seriously, tested thoroughly, and then discarded because of its impracticality." 89/

Another objection raised about the accrual basis for the Federal Government relates to the apparent conflict between cost-based accounting and funding decision-making in Congress. But GAO addressed this issue in the report, noting that while cost information was needed, this should not be the only basis for spending control by Congress:

> The budgeting process is keyed to budget authority and outlays, with budget authority based on obligations rather than costs. This is as it should be, given the fund control focus embedded in the Constitution. . . . The reconciliation between a budget based on cost, and funding based on obligations, is a mechanical process that has been used by some agencies in the past with little added effort. 90/

In calling for preparation of annual consolidated financial reports, the GAO report suggested:

> Consolidation of audited financial statements provides an overall picture of the federal government's financial condition. Disclosure of the cumulative financial effect of past decisions aids the public and policy formulators in analysis of resources and commitments. In addition, annually audited statements will help maintain the integrity of the financial information by assuring that the data are consistent, comparable, and reliable. 91/

But GAO's recommendation to require consolidated financial statements reflecting Federal operations, assets, and liabilities likewise was received with reservations by OMB and CBO.

89/ Letter from David Stockman to Jack Brooks, pp. 3-4.

90/ GAO, Managing the Cost of Government, v. II, p. 46.

91/ Ibid., p. 30.

In his letter assessing the GAO report, Mr. Stockman observed that the estimates of Federal liabilities are very dependent upon economic and programmatic assumptions, a problem also cited with respect to an accrual-based system. He also questioned the very suitability of the corporate-type financial statement for the Federal Government, noting:

> More importantly, this balance sheet approach ignores the sovereign power of government to command resources. In so doing, the [GAO] report misses the fundamental point that the entire resource allocation process is, in effect, an effort to achieve balance between this sovereign power and the proclivity of the political system to distribute not only the resources that this power produces in the form of tax and other receipts, but more. The balance sheet approach is not useful in this context. 92/

CBO agreed with OMB that such a business-type financial statement was not likely to improve Federal budget decisionmaking, so there seemed to be no need for preparation of such a balance sheet,

> as the government's profitability, 'net worth,' or financial performance do not appear to present an appropriate basis for considering budgetary policy. Decisions about the appropriate levels of federal spending, taxing, and borrowing should be based on evaluations of the government's fiscal position and the state of the economy. 93/

In a recent letter to Chairman Brooks, the Comptroller General commented upon the role of financial statements, reiterating support for the basic concepts put forth in the GAO report. But he also stressed the importance of combining agency financial statements with annual audits:

> Comprehensive financial statements at the agency level are important, if not crucial, to providing discipline and coherence in financial management and accounting, in ensuring data accuracy, and in providing a complete picture of the activities and accomplishments of federal agencies. The requirement for such statements will provide a strong impetus for agencies to improve the financial management reporting systems needed by program managers to more effectively manage their programs.
>
> Experience reveals, however, that these benefits will be achieved only if financial statments are combined with a program of annual financial auditing. 94/

92/ Letter from David Stockman to Jack Brooks, pp. 4-5.

93/ Letter from Rudolph Penner to Jack Brooks, p. 3.

94/ General Accounting Office. Comptroller General. Letter from Charles A. Bowsher to Jack Brooks, Chairman of the House Committee on Government Operations. Dec. 11, 1985. p. 4.

The Comptroller General also emphasized that GAO did not advocate the adoption of business-type financial statements for the Federal Government, but was looking "to the development of financial statements tailored specifically to the unique circumstances and requirements of the federal government." He also noted that prototypes of consolidated financial statements for the entire Federal Government, with the support of the Treasury Department as well as GAO, have been issued regularly since fiscal year 1975. 95/

A recent article in the Wall Street Journal cited a partner in a major accounting firm, in effect supporting GAO in the need for consolidated financial statements:

> Basically, the government is like someone who uses only a checkbook. . . . That's not the complete picture of its financial affairs. It doesn't reflect assets, liabilities, commitments in the future. How can you run a trillion-dollar business without knowing what its financial position is? 96/

The article, while including both sides of the cash versus cost-based accounting debate, observed that the combination of deficit reduction goals "and a simple cash accounting system may drive the administration and Congress to embrace proposals this year that will help raise cash or cut spending in the short run but increase costs over the long run." 97/

In the recent letter from the Comptroller General to Mr. Brooks, Mr. Bowsher noted that GAO sought "to stimulate the discussion, not to 'sell' a particular solution" regarding Federal financial management reform. Since GAO could neither implement all the recommendations itself nor force others to do so, the objective was to initiate discussion toward an eventual consensus compromise among all those involved:

> We [GAO] did not expect universal support for all the ideas we suggested be considered. But these differences need to be surfaced and discussed openly if there is to be movement toward consensus on the overall direction the government should take in putting its financial management house in order. 98/

95/ Ibid., p. 5.

96/ Murray, Alan. Government's System of Accounting Comes Under Rising Criticism. Wall Street Journal, Feb. 3, 1986. p. 1.

97/ Ibid., p. 16.

98/ Letter from Charles Bowsher to Jack Brooks, p. 3.

Debate over the direction of financial management improvement in the Federal Government seems destined to continue. As described above, various initiatives are underway and further changes appear likely.

In recent years OMB has acquired new duties with respect to Federal financial management as a result of statutory requirements and in connection with the Reform '88 program. But financial management in the Federal Government remains a shared function, with the Treasury Department and the General Accounting Office fulfilling central roles along with OMB.

Perhaps in the future OMB's responsibilities in the field of financial management may be clarified or altered. That OMB will continue to exercise a prominent role seems beyond question, however. As OMB Director James Miller recently responded to a concerned Chairman Brooks: "Please be assured that improving financial management will remain a top priority in OMB, and that we will continue to pursue vigorous and effective implementation of financial management legislation." 99/

99/ Office of Management and Budget. Letter of James C. Miller III to Jack Brooks, Dec. 13, 1985.

WORKFORCE MANAGEMENT AT OMB: ISSUES OF FUNCTIONAL ASSIGNMENT AND INSTITUTIONALIZATION

Peter M. Benda*
and
Charles H. Levine**

The assignment of functional responsibility among the central management agencies of the executive branch and the line departments and agencies has been a recurring problem since the creation of the Bureau of the Budget in 1921. In recent years, the overlap and duplication of functions between OMB, OPM, GSA, the Executive Office of the President, and line agencies has been cited as one important obstacle to the development of integrated and effective government-wide management improvement strategies. 1/

Part of the difficulty in determining how responsibility for different functions should be allocated among the central management agencies stems from the problem of projecting the likely consequences of assigning a given function to OPM rather than OMB, to the GSA rather than OPM, etc. For a variety of reasons, some functions appear to become "institutionalized," i.e., well accepted by the particular organization to which they are assigned, while others never become incorporated in a stable and routine way in that same agency's operations and their effectiveness is thereby limited. 2/ Decisions regarding the allocation of responsibilities among the central management agencies thus may have important real-world implications, but practitioners and scholars alike have struggled to find a way to ensure that expectations are not disappointed in the translation from theory to practice.

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1/ See, e.g.: President's Private Sector Survey on Cost Control. Report on Federal Management Systems. Washington, PPSSCC, 1983. p. 8-11.

2/ This definition of "institutionalization" is derived from that offered by Margaret Wyzsormirski, who has suggested that similar criteria may be used to determine whether agencies have become "institutionalized" in the governmental system as a whole. See: The De-Institutionalization of Presidential Staff Agencies. Public Administration Review, vol. 42, no. 5 (September/ October 1982). p. 456, fn. 1, and the sources cited therein.

Issues of functional assignment and institutionalization have figured prominently in the area of personnel administration for some time, especially where the matters of "workforce management" have been concerned. In theory, the concept of "workforce management" implies a comprehensive and integrated approach to determining "the number of people and the skills necessary to accomplish an organization's objectives, and the actions necessary to obtain, develop and motivate the workforce." 3/ While many business firms have developed such human resources planning systems, workforce management in the Federal government has been carried out in piecemeal fashion, with various responsiblities being allocated both among the central management agencies and between OMB, OPM, and GSA and the line agencies and departments. According to the President's Private Sector Survey on Cost Control (the Grace Commission): "Work force requirements ... have received little attention in Government because budget decisions are usually overriding, [because] there is a lack of leadership from the Office of Personnel Management (OPM), and [because] there is insufficient information to develop complete and integrated systems." 4/ The fragmentation and gaps in the workforce management system, the Commission charged, has given rise to a host of problems in the Federal government's personnel practices, including misallocations of personnel, a lack of attention to the improvement of worker productivity, excessive overtime costs, thousands of unnecessary temporary positions as well as excessive managerial positions, and inadequate training and development programs. 5/

To rectify this state of affairs, the Grace Commission recommended "that OPM develop an adequate work force planning policy to be used by Federal agencies and that OMB develop and coordinate government-wide programs to improve productivity...." 6/ This recommendation was forwarded as part of a large structural reorganization of the central management agencies proposed by the Grace Commission -- the Office of Federal Management (OFM) -- to build integrated management policies and systems in the Federal government generally. No matter

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3/ President's Private Sector Survey on Cost Control, J. Peter Grace, Chairman. War on Waste. New York, MacMillan Publishing Company, 1981. p. 228.

4/ Ibid., p. 228-229.

5/ Ibid., p. 229.

6/ Ibid.

what reception it's OFM plan receives, 7/ the Commission's proposal to divide responsibility between OPM and OMB along the lines outlined seems to reflect an unresolved ambiguity about what role each of these agencies might best play in helping to improve workforce management capabilities in the Federal government. The Commission emphasized the need for human resource planning procedures which would allow for uniform decision making throughout the Federal government. But there is little evidence that its proposal would substantially alleviate the problems arising from the division of labor between OMB and OPM (before 1978, the Civil Service Commission) that have often impeded reform efforts in the past. The central question is this: on what basis should the assignment of workforce management responsibilities be predicated? In particular, what role should OMB play in this context?

In this report, we explore this issue by focusing on two of the many functions that might be said to fall under the rubric of workforce management: control of workforce size and executive development. While BoB/OMB has long exercised principle responsibility for the first of these functions, authority for overseeing and administering government-wide executive development programs has alternately been shared by OMB and the CSC/OPM or regarded as properly the exclusive province of one or the other of these agencies. By using these two case studies as "foils," we hope to draw some general conclusions about the considerations that seem to militate for or against the "institutionalization" of workforce management functions at OMB. The lessons to be learned from these experiences are suggestive of the problems that future initiatives to strengthen the workforce management system are likely to encounter.

Workforce Size

Of the various functions BoB/OMB has assumed for federal personnel policy and administration, its responsibility for the control of work force size is clearly of longest standing. All Presidents since World War II have favored constraints on the overall level of Federal civilian employment and looked to BoB/OMB to play the lead role in monitoring and enforcing limitations on staffing levels throughout the Executive branch. For more than four decades, as part of its annual review of agency budget requests, BoB/OMB has established "employment ceilings" specifying the maximum allowable personnel resources available to a department or agency in a given fiscal year. At various points since 1968, BoB/OMB has also been

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7/ The pros and cons of the PPSSCC's Office of Federal Management proposal are reviewed in "OMB's Management Role: Issues of Structure and Strategy" by Peter M. Benda and Charles H. Levine, elsewhere in this Committee Print.

directed to oversee implementation of a number of government-wide "hiring freezes" or restrictions on employment mandated by the Congress or the President. 8/ However, the annual establishment by OMB of personnel ceilings for each agency clearly constitutes the "predominate method of control over employment" in the Federal government, 9/ and this will be our primary focus here.

OMB's Administration of Personnel Ceilings: Background and Recent Developments

BoB/OMB's formal responsibility for monitoring the size of the Federal workforce dates from 1942. In that year, Congress enacted

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8/ Because they rely on attrition and do not require agencies to initiate reduction-in-force (RIF) actions, partial or total restrictions on hiring are generally considered to be the least disruptive means of achieving across-theboard reductions in the number of Federal employees. Congress utilized this tool when, in Section 201 of the Revenue and Expenditure Control Act of 1968 (p.L. 90-364), it acted to restrict agency appointments to 75% of the number of vacancies in full-time permanent positions "during months when the total number of Federal employees exceeds the level that existed on June 30, 1966." (This restriction was repealed in 1969.) Section 311 of the Civil Service Reform Act of 1978 (P.L. 95-454) mandated that the total number of civilian employees in the Executive Branch during fiscal years 1979-1981 not exceed the level that existed on September 30, 1977, without, however, specifying what type of action should be taken to keep employment figures within this overall ceiling.

Government-wide restrictions on employment have more frequently been imposed unilaterally by the President by means of Executive Orders or other directives. President Carter imposed three partial freezes on appointments to full-time permanent positions, and on his first day in office President Reagan ordered a total freeze on all Federal civilian hiring which lasted until mid-March 1981. OMB's role in the implementation of these freezes was criticized by the General Accounting Office in a March 1982 report in which the GAO voiced its long-standing opposition to the use of centrally-mandated employment ceilings. See: U.S. General Accounting Office. Recent Government Hiring Freezes Prove Ineffective in Managing Federal Employment. FPCD-82-21, March 10, 1982.

9/ U.S. General Accounting Office. Personnel Ceilings -- A Barrier to Effective Manpower Management. FPCD-76-88, June 2, 1977. The Congress has generally been even less disposed to mandate agency-specific employment ceilings than it has to impose such ceilings government-wide (see footnote 8 above). However, with the exception of the last two budget cycles (fiscal years 1985 and 1986), every Department of Defense Authorization Act since 1975 has established annual ceilings on civilian employment in the Department of Defense.

Public Law 77-821, an Act which required department and agency heads to justify their personnel levels to the Director of the Bureau of the Budget and authorized the BoB to reduce the number of personnel found to be in excess of minimum requirements. The BoB was also empowered to establish personnel ceilings for the individual departments and agencies in two subseqent enactments, the Federal Employees Pay Act of 1945 and Public Law 79-360 of 1946. 10/ The statutory basis for this practice, however, lapsed with the repeal of all statutory personnel ceilings in the Budget and Accounting Procedures Act of 1950 (P.L. 81-784) and has not been renewed. 11/

The recission of BoB's statutory authority to impose a personnel ceiling on an agency, however, produced little change: the use of such ceilings to control agency employment has continued uninterrupted as a matter of executive branch policy since 1951. In June of that year, the Budget Bureau issued Circular A-44, which advised department and agency heads that the President stressed the importance of conserving manpower and would hold them responsible for giving this objective top priority. Circular A-44 was later superceded by Circular A-64 (Revised) of June 28, 1965 ("Position Management Systems and Employment Ceilings"), which set forth procedures and concepts regarding personnel ceilings and emphasized that:

> "Consistent with the policy of reducing Government costs ... the President expects each agency head to pursue vigorously the efforts of his agency to achieve lower employment levels and increased productivity ... and to assure strict observance of the employment ceilings."

Circular A-64 (Revised) was amended in January 1970 to require detailed justifications on requests for ceiling adjustments "in cases where Federal employees are used in lieu of service contracts for the performance of required services." It otherwise underwent no significant modification until 1980 and remained in effect until July 1983, at which time those provisions of Circular A-64 (Revised) pertaining

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10/ Under Section 607 of the Federal Employees Pay Act (P.L. 79-106), executive branch agencies were required to provide the Director of the BoB with all information necessary to determine the number of full-time civilian employees for the performance of their functions. P.L. 79-390 of 1946 amended this provision to include part-time employment; it also established maximum year-end ceilings for the Departments of War and Navy and set quarterly ceilings on the aggregate employment of all other departments and agencies.

11/ Although the incidence has been relatively infrequent, Congress itself has established employment ceilings on occasion since 1950. See footnotes 8 and 9 above.

to employment ceilings were superceded by portions of Circular A-11 ("Preparation and Submission of Budget Estimates"). The current administrative policy on personnel ceilings is set forth in Circular A-11 (Revised), section 13 and Appendix C.

As this overview suggests, responsibility for administering the ceiling control device has long since been "institutionalized" as a basic component of OMB's function. 12/ It is important to note, however, that while the basic process whereby ceilings are established has remained much the same under each of the Circulars referred to above 13/, a significant change in the manner in which OMB determines

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12/ The extent to which this function has become "institutionalized" at OMB is reflected in the fact that, in marked contrast to the on-again, off-again pattern whereby different OMB units and divisions have been assigned various other personnel management tasks, responsiblity for oversight of the ceiling system has been centered in one unit within the Budget Review Division (BRD) -- currently known as the Resource Systems Branch -- for at least the last twenty years. A single career official, George Strauss, has served as Chief of this unit for approximately 15 years.

13/ As noted earlier, ceilings are generally set by OMB as part of the budget formulation process. Agency estimates of direct manpower needs are incorporated in their annual budgetary submissions to OMB and are reviewed by the latter in light of "budget proposals and assumptions with regard to workload, efficiency, proposed new legislation, interagency reimbursable arrangments, and other special financing methods." After negotiation with OMB, agency requests for personnel resources are finalized for inclusion in the President's budget. Upon review of the President's budget, the Congress undertakes, as part of the authorization and appropriation process, to review agency personnel ceilings and normally spells out the intended personnel level in committee reports and floor statements. (On occasion, Congress has reacted to restrictive OMB ceilings and the tendency of some agencies to accumulate large numbers of unfilled vacancies by establishing "ceiling floors" which require a minimum complement of employees for specific programs or agencies.) OMB formally specifies the personnel ceilings in "allowance letters" sent to each department or agency after budget authority (BA) has been appropriated.

The ceilings thus specified are intended to provide "absolute limits" on the personel resources available to an agency through direct hire (does not include contractors) although provision has been made for their adjustment during the applicable fiscal year when congressional action or other developments clearly indicate the need for revision. Generally speaking, OMB has not sought to mandate employment limitations for specific agency programs. Rather, the department or agency has been held responsible for allocating its

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and monitors an agency's use of its annual "maximum allowable personnel resources" was implemented in fiscal year 1982.

By virtue of the 1980 amendment to Circular A-64 (Revised), OMB in FY1982 switched its method of accounting for federal employees from the traditional "head count" or "end-of-year" ceiling system to a new "full-time equivalent" (FTE) system. The "head count" or "end-of-year" system (as the alternative designations suggest) had two distinguishing features. First, the limitations on direct work strength specified in the ceilings -- which were of two types, one ceiling on full-time permanent (ftp) employees, the other on total employment, including temporary, part-time, and intermittent hirees -- were spelled simply in terms of the number of permissible employees or positions (i.e., no more than "x" slots available for full-time permanent employees). Second, these limitations were applicable only on the last day of the fiscal year — that is, an agency could exceed its specified quotas in either or both categories so long as its end-of-year figures remained within the prescribed bounds.

The "FTE" ceiling system, which the Carter Administration had instructed OMB and the Civil Service Commission (now OPM) to begin testing on a trial basis in 1977, incorporates changes along both of the dimensions alluded to above. First, rather than being predicated on the number of employees or positions _per se_ as in the "end-of-year" system, it is based on the total number of employee _work years_ deemed necessary to achieve agency missions and objectives. Second, the specification of a maximum number of workhours for use by agency employees provides a "bank account" from which each hour worked by those employees can be deducted. 14/ Hence, the FTE system affords a means whereby an agency's compliance can be monitored throughout the fiscal year, rather than only on the last day of the fiscal year.

OMB supported the switch-over to the "FTE" system, in no small measure due to the fact that its adoption would force agencies to closely monitor staff hiring and usage on a continuous, year-round

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13/ (Continued) authorized employment levels downward until each of its operating units have been provided ceilings. Agency officials have, however, been charged to provide their employment figures on a monthly basis to the CSC/OPM and, in the event of a ceiling violation, to submit a report outlining the factors giving rise to the violation and action taken to prevent a recurrence.

14/ When the "FTE" system was first implemented government-wide, OMB continued to set two employment ceilings for each agency as it had before. However, OMB Bulletin No. 83-5 of October 14, 1982 further modified the system by eliminating the separate ceiling on full-time permanent employment. All agencies are now given one ceiling which represents the full-time equivalent of all categories of employment.

basis. However, the primary impetus for the change came from elsewhere. Although they did not (and were not intended to) provide a corrective to all the criticisms that have been raised against the use of personnel ceilings as such, the changes introduced in FY1982 are best understood when viewed in light of the larger dispute about the use and effectiveness of ceiling controls that has been going on for quite some time.

Ceilings: Arguments Pro and Con

Traditionally, BoB/OMB has maintained that personnel ceilings provide a necessary control over what otherwise might be an explosive growth in Federal employment, a growth proponents argue could not be curbed by budgetary restrictions alone. Proponents argue that the use of ceilings encourages efficiency and cost-effectiveness in government by focusing management concern on program priorities, budget and staff allocations, and means of effectively utilizing available manpower. Limitations on full-time permanent employment in the agencies have been defended on the grounds that such ceilings help reduce the costs associated with the Federal government's underwriting of employee retirement and health benefits while encouraging agencies to develop and utilize a more flexible workforce (i.e., one with a higher proportion of part-time and temporary employees). In addition, personnel ceilings are said to be of benefical effect in encouraging agencies to consider alternative, less expensive means of carrying out their program objectives and responsibilities -- through, for example, the temporary employment of private contractors for the provision of certain services.

Critics, however, have taken issue with the traditional arguments on behalf of personnel ceilings, contending that ceilings do not control costs or promote efficiency and generally have deleterious effects on agency operations. One of the most persistent of these critics has been the General Accounting Office (GAO). In a series of reports issued over the past decade and a half, the GAO has pressed its view that personnel ceilings constitute a barrier to effective manpower management in the Federal government and that normal funding or program limitations provide an alternative and equally or more effective means of controlling agency employment levels. 15/ The

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15/ Some of the relevant GAO reports include: Impact of Employment Ceilings on Management of Civilian Personnel (B-165959, April 30, 1971); Project Reflex (Resource Flexibility) -- A Demonstration of Management Through the Use of Fiscal Controls Without Personnel Ceilings (B-165959, June 21, 1974); Implementation and Impact of Reductions in Civilian Employment, Fiscal Year 1972 (B-180257, July 2, 1974); Part-Time Employment in Federal Agencies (B-159950, January 2, 1976); Personnel Ceilings -- A Barrier to Effective Manpower Management (FPCD76-88, June 2, 1977); Federal Workforce Planning: Time

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controls imposed by ceilings, the GAO has argued, "deprive agency management of options for accomplishing essential work through the most efficient and economical use of the most appropriate types of manpower in specific circumstances." 16/

Other critics, including various Congressional Committees and presidential advisory groups, have echoed many of the concerns that have prompted the GAO to call for the abolition of ceiling controls. Among the central claims traditionally made by those opposed to the use of personnel ceilings, four interrelated arguments deserve brief mention here:

- Restraints on the size of the Federal workforce have been imposed without regard to the Government's workload.

  Critics contend that while objections to the proliferation of Federal units and programs or their respective budgets may be justified, a far less substantial case can be lodged against the size or growth of the Federal workforce. The Federal share of total civilian government employment has in fact declined significantly over the past three decades (from 37.2 percent in 1954 to 17.5 percent in 1984), but there has been no corresponding moratorium on adding to the Government's workload. The imposition of ceilings therefore forces agencies to exploit other ways of doing their job, e.g., by using private contractors.

- Ceilings create a misleading illusion of control in that restraints on the size of the Federal workforce do not necessarily control the costs of government.

  This constitutes one of the chief objections to the use of personnel ceilings. If agencies need more manpower than allowed by their assigned ceilings, they must acquire the additional manpower by other means, i.e., through contracts with private firms or through grants to institutions and State and local government. "These people are neither included in personnel ceilings nor counted as part of the Federal work force," the GAO has observed, but "[r]egardless of the source of manpower, the Federal government ultimately bears the cost." 17/

15/ (Continued) for Renewed Emphasis (FPCD-81-4, December 30, 1980); and, Improving the Management and Credibility of the Federal Work Force Through Better Planning and Budgetary Controls (FPCD81-54, July 17, 1981).

16/ Personnel Ceilings -- A Barrier to Effective Manpower Management, p. 21.

17/ Ibid., p. 1.

- Personnel ceilings create an incentive for hiring out irrespective of cost, efficiency, or manpower considerations.

  Express prohibitions against using contracting-out to circumvent or avoid ceilings have been incorporated into the administrative policy on employment ceilings since Circular A-64 (revised) of June 1965, a policy that has been reiterated in Circular A-76 on contracting-out. "Nevertheless, it has been established that this violation does occur and that the use of contracting as a principal means of coping with personnel ceilings, hiring freezes, and other contributors to staffing shortages may be pervasive in executive branch agencies." 18/

- Because they may result in insufficient resources to perform work required, the imposition of ceilings may have adverse consequences on agency productivity and efficiency.

  In an appendix to a 1977 report on personnel ceilings, the GAO provided a number of examples to illustrate how the use of ceilings had resulted in the reduction of agency services and the deferment or outright cancellation of work. 19/

As suggested by the fact that no significant changes in the nature or operation of the ceiling system were made for many years, OMB contended that compelling counter-arguments could be brought to bear against the claims of critics. For example, OMB has argued that many of the problems which agency officials, the GAO, and others have attributed to OMB-devised restrictions on manpower usage (e.g., reduced services, deferred work, overtime costs, etc.) have in fact been due to "inadequate or inflexible internal personnel management practices rather than ... employment ceilings." 20/ Other objections have been dismissed in similar fashion. For example, commenting on a draft version of the 1977 report in which the GAO reiterated its claim that personnel ceilings do not promote less costly government because the taxpayer "must ultimately bear the cost" of alternate sources of manpower, OMB observed: "[A]lthough previous GAO reports ... have emphasized the need to consider the full cost of employee benefits

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18/ U.S. Library of Congress. Congressional Research Service. The Relationship Between Federal Personnel Ceilings and Contracting Out: Policy Background and Current Issues. Report No. 80-138-Government. By Alice Mosher. Washington, August 5, 1980. Examples of contracting out to circumvent personnel ceilings are provided in this report on p. 7-10. See also: U.S. GAO, Personnel Ceilings -- A Barrier to Effective Manpower Management, p. 65.

19/ U.S. GAO, Personnel Ceilings -- A Barrier to Effective Manpower Management, Appendix IV, p. 42-46.

20/ Cited at ibid., p. 26.

(e.g., retirement), the draft report does not recognize the substantial hidden costs associated with the use of Federal employees." 21/ On a higher plane, OMB has on occasion been inclined to suggest that, even if it could conclusively be demonstrated that arguments on cost grounds made by the GAO and others had merit, these objections are basically beside the point: "employment ceilings exist to constrain increases, primarily because of the proper concern of the President, many members of Congress, and the public in the number of employees on the Federal payroll, regardless of any other considerations." 22/ (emphasis supplied)

The recent adoption of the "FTE" system evidently has not induced OMB to change its basic position on personnel ceilings in the least. OMB has continued to maintain that direct staffing limitations are necessary to ensure that the size of the direct Federal work force is controlled, and in some respects the fact that the "FTE" system has obviated many of the traditional objections to the ceiling control device may simply have strengthened its resolve in this context. 23/

The Lessons of "Institutionalization"

Recognition that the dispute as to the advisability of relying upon personnel ceilings as a staffing control device is likely to continue substantially unabated is not, however, at least for immediate purposes, the most important conclusion to be drawn from the story of ceiling management at OMB. Our primary concern in this report is to explore the factors that have militated for or against the institutionalization of "workforce management" functions at OMB, and when viewed from this broader perspective, there is a more important lesson to be gleaned: whatever misgivings may have been or may in the future be entertained about the effectiveness of one or another technique to ensure that the size of the Federal work force is controlled, no one has seriously questioned the proposition that employment levels should be no larger than is necessary to accomplish agency missions or, more significantly, that of the various central "management" agencies, OMB ought to have primary responsibility for seeing to it that efforts are made to keep staffing levels within appropriate bounds.

21/ Cited at ibid., p. 23.

22/ Cited at ibid., p. 61-62.

23/ See, for example, the remarks of an OMB spokesman cited at: U.S. GAO, Improving the Credibility and Management of the Federal Work Force Through Better Planning and Budgetary Controls. GAO/FPCD-84-11, July 17, 1981. p. 16. See also ibid., p. 7.

The GAO has arguably been the most persistent and vociferous opponent of the use of personnel ceilings. Nonetheless, as is revealed in ex-Comptroller General Staats' formulation of what the GAO regards as the most appropriate alternative to employment ceilings, it has not challenged the basic legitimacy of OMB's role in monitoring the size of the Federal work force:

> "The basic framework for a practical and effective alternative ... exists in the budget process. What is lacking is confidence in the soundness of agencies' estimates [of their manpower needs] and in agency managers' willingness to adhere to their estimates. ....
>
> With OMB's direction, the agencies could develop methods for preparing sound estimates of the minimum manpower requirements needed to accomplish all types of authorized programs and activities. The agencies should fully document the processes and data used and make this information available to OMB and concerned congressional committees for evaluation.
>
> Since the budget process takes place every year and budget examiners and congressional committees and subcommittess monitor agency activities during the year, agency managers would be obliged to develop realistic estimates and avoid deviating substantially from them without approval." 24/

It is obvious that the GAO's position is predicated on the premise that the control of personnel levels and types of manpower used is properly, at least in the first instance, a function of line management in the departments and agencies -- a premise that OMB for its part has been somewhat reluctant to embrace quite so wholeheartedly. Nevertheless, the GAO's proposed alternative to centrally-mandated personnel ceilings does not challenge the basic assumption that, by virtue of the central position it occupies in the budget process, OMB has the best vantage point from which to supervise a range of agency activities -- including their adherence to manpower targets.

The very considerations that seem to argue for OMB's retention of the "workforce size" component of the workforce management function, however, might militate against the assignment to OMB of other components of that function. Such would seem to be the principal lesson of the story of executive development efforts in the Federal government, to which we now turn.

24/ Statement of the Comptroller General before the Subcommittee on Human Resources, House Committee on Post Office and Civil Service, September 11, 1979. Cited at ibid., p. 12.

Executive Personnel Development

It has long been recognized that the presence of able, prepared, and committed executives has a critical bearing on the Federal government's capacity to manage public programs effectively. In the view of many commentators, however, the government's performance in executive personnel development to date has been sadly lacking. While a number of historic problems have contributed to the failure to devise a reasonably systematic, government-wide approach to executive personnel planning and development, one important source of difficulty has been the recurrent controversy that has surrounded the question of who should have charge of such endeavors. Indeed, the pattern of divided responsibility and role conflict between OMB and the Civil Service Commission/Office of Personnel Management that has characterized so much of Federal personnel policy and administration has been particularly pronounced in this arena.

Executive Development: Early History through the Nixon Administration

The authority of the Civil Service Commission with respect to executive personnel development dates from the Government Employees Training Act of 1958 (P.L. 85-807), which charged the Commission with responsibility for administering and overseeing all Federal employee training programs. 25/ In 1963 and 1966, respectively, the Commission established "Executive Seminar Centers" in Kings Point, N. Y. and Berkeley, CA. aimed at middle-managers (GS 14-15), 26/ and in 1968 it set up the Federal Executive Institute (FEI) at Charlottesville, VA., which sponsored (five times annually) an eight-week Senior Executive Education Education program to train GS-16-18s and their equivalents -- so-called "supergrades". 27/ Some criticisms were expressed as to

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25/ Prior to this point, direction of such programs, to the extent they existed at all, had been the exclusive province of the individual departments and agencies. The initial mandate provided the CSC by the terms of the Government Employees Training Act was reinforced by Executive Order 11348 of April 1967, which instructed the Commission "to develop [federal] employees through the establishment and operation of progressive and efficient training centers." Primary responsibility for the direction of the CSC's training and development programs, including those sponsored by each of the Commission's ten regional offices, was entrusted to the Bureau of Training.

26/ For background on the Executive Seminar Centers and an early assessment of their programs and operation, consult: Rehfuss, John A. Executive Development: Executive Seminar Center Style. Public Administration Review, v. 30, September/ October 1970. p. 553-561. An additional center was later established in Oak Ridge, Tennessee and the Berkeley center was transferred to Denver, Colorado in the late 1960's.

27/ Guidance for the programs sponsored by the FEI was initially provided by the Bureau of Executive Manpower, which was established in

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the quality and appropriateness of the curricula in the programs offered at these centers. 28/ Nonetheless, the basic authority of the CSC over executive development matters went largely uncontested throughout the 1960s.

A major break in this context occurred with the transformation of the Bureau of the Budget into the Office of Management and Budget by means of Reorganization Plan No. 2 of 1970. Citing what it termed the "primitive state" of executive manpower planning and development in the Federal government, the President's Advisory Committee on Executive Organization (the Ash Council) had recommended to President Nixon that a new division be established within a refashioned BoB to "take the lead in developing and evaluating programs to recruit, train, motivate, deploy and evaluate top executives." 29/

This intrusion upon what had been the exclusive prerogative of the Civil Service Commission was vigorously denounced by Chairman of the CSC Robert E. Hampton in a private March 1970 memo to presidential assistant John Erlichman and was also attacked by several witnesses in testimony delivered before a subcommittee of the House Committee on Government Operations during consideration of Reorganization Plan No 2. A number of objections to the Ash Council proposal were cited, e.g., that it would: downgrade the authority and responsibility of the CSC by imposing OMB as a layer between it and the President, thus denying him essential advise on personal management from the most management from the most knowledgeable source; risk setting up a "political patronage system" in which appointments and the quality and

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27/ (Continued) 1966 to encourage the development of and planning for top career personnel and to oversee the new Executive Assignment System, which the CSC introduced during the same year. In 1974, the FEI added a three-week Executive Leadership and Management Program, designed to serve executives at the critical time of their initial entry into federal service, to its curriculum.

28/ See, e.g.: Wynia, Bob L. Executive Development in the Federal Government. Public Administration Review, v. 32, July/August 1972. p. 313-314.

29/ The Ash Council suggested that the proposed Division of Executive Personnel within OMB would "rely on the Civil Service Commission and the agencies to execute programs," thus implying that the CSC's principal role would be to implement OMB-devised executive development programs. The groundwork for this proposed downgrading of the CSC's executive development function vis-a-vis OMB had been laid in an earlier memo dating from August 20, 1969, in which, having noted that "the government does not have personnel policies or mechanisms which permit the mobilization of the best managerial talent in places where the needs are greatest," the Council said: "While appreciating the present role of the Civil Service Commission, we believe that the President's office should take the lead in developing programs to recruit, train, motivate, and deploy top executives."

promotions to top career positions would be politically motivated, thereby endangering the nonpolitical nature of the civil service and jeopardizing the merit system; and, produce confusion and increase costs by assigning two separate agencies apparent ultimate administrative jurisdiction over Federal employee personnel policies. 30/

In response to these allegations, Administration spokesmen claimed that OMB's role would be to supplement the Commission's executive development efforts and to coordinate the Federal government's many different personnel systems, and that no infringement of the CSC's executive personnel management function was implied or intended. 31/ These assurances evidently did little to assuage a majority of the Government Operations Committee, which, in its report on Reorganization Plan No. 2, voiced concern that the proposal "could be used as a basis for downgrading the statutory authority of the Civil Service Commission, endangering the nonpolitical nature of civil service, and making the civil service system subservient to the Executive Office of the President." 32/ However, the Committee's resolution to disapprove the Plan was not endorsed by the House, and shortly after OMB commenced operations in July 1970 it served notice of its intention to assume an active role in Federal personnel management by announcing the establishment of a Division of Executive Development and Labor Relations (EDLR).

The establishment of this new division did not, of course, in and of itself ensure that OMB would assume the "lead role" in executive development envisaged for it by the Ash Council. At the very least, the controversy surrounding that Council's proposal to vest increased authority for executive development matters in OMB had alerted the latter to the need to work cooperatively with the CSC in these matters 33/, and in fact OMB for some time continued to play a

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30/ See: U.S. Congress. House. Committee on Post Office and Civil Service. The Merit System in the United States Civil Service. Monograph prepared by Bernard Rosen. 94th Congress, 1st session. Committee Print No. 94-10. Washington, U.S. Govt. Print. Offc., 1975. p. 72-75. (Hereafter cited as: Rosen, The Merit System in the U.S. Civil Service.)

31/ Ibid., p. 75. But cf. footnote 29 above.

32/ U.S. Congress. House. Committee on Government Operations. Disapproving Reorganization Plan No. 2 of 1970. 91st Congress, 2nd session. House Report No. 91-1066. Washington, U.S. Govt. Print. Offc., 1970. p. 15.

33/ The need for cooperation had been underscored by President Nixon in his March 12, 1970 message to Congress accompanying Reorganization Plan No. 2, in which the President had emphasized that "Under [OMB's] leadership, there will be joint efforts to see to it that all executive talent is well utilized...." (emphasis added.) This phrase may have been included in the President's message to reassure CSC

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secondary role to the CSC in this arena. For example, OMB contributed only marginally to to the development of the Nixon Administration's ambitious 1971 proposal for the establishment of a Federal Executive Service (FES). The inspiration for the FES proposal, which would have brought 7,000 career and non-career executives at GS levels 16-18 (and their equivalents) under a single system in order to ensure the more effective development and utilization of executive manpower resources, appears to come almost entirely from the Civil Service Commission's Bureau of Executive Manpower. 34/ Moreover, while OMB's contemplated role in this scheme was not extensive 35/, the precariousness of its newly-commissioned executive development function was dramatically underscored when the Senate Committee on Post Office and Civil Service, in its report on S. 1682, took exception to the notion that the agency had any legitimate role to play in administration of the FES. Professing to view "with some concern" what it termed OMB's "intrusion" into the "substantive business, unrelated to budgetary matters, of Departments and agencies," the Committee moved to strike a provision

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33/ (Continued) Chairman Hampton (who had expressed concern about the implications of Ash Council proposal in a private memo submitted to John Erlichman a few days earlier) that the Administration did not intend OMB entirely to supplant the Commission's role in executive development. See: Rosen, The Merit System in the U.S. Civil Service, p. 72-73.

34/ For general background on the FES, which President Nixon first proposed to Congress on February 2, 1971, consult: Berlin, Seymour S. The Federal Executive Service, Civil Service Journal, v. 11, April-June 1971. p. 7-13. No OMB officials testified during the first set of hearings on the proposed FES system, held before the Senate Committee on Post Office and Civil Service in May 1971. OMB Associate Director Frank Carlucci, however, did appear before the House subcommittee on manpower and civil service the following April, at which time he was questioned about OMB's role in the development of the FES proposal. Nothing in his response appeared to challenge subcommittee chairman Henderson's understanding that "basically this FES proposal was developed in the [CSC]." See: U.S. Congress. House. Committee on Post Office and Civil Service. Subcommittee on Manpower and Civil Service. The Federal Executive System. Hearings on H.R. 3807, 92nd Congress, 2nd session. Washington, U.S. Govt. Print. Offc., 1972. p. 64-65.

35/ The legislative proposal for the FES did make provision for OMB-CSC collaboration in certain areas -- for example, in determining the number of FES executives to be allocated to each agency and for ensuring that the ratio of career to non-career executives government-wide remained within prescribed limits -- but all concerned (including OMB Associate Director Carlucci) appear to have understood that day-to-day administration as well as substantive oversight and direction of the FES would be provided by the Civil Service Commission. Ibid., p. 73.

mandating collaboration between OMB and the CSC in certain aspects of FES administration and to make the Commission "solely accountable" for the program. 36/

Although Congress never enacted the Nixon Administration's FES proposal into law 37/, the Senate Post Office and Civil Service Committee report on S. 1682 illustrates some of the external obstacles that would confront OMB in its efforts to become more actively involved in executive development matters. Not all the obstacles, however, were external in nature. The fact that OMB continued to play a secondary role to the CSC in this context in the period immediately following the 1970 reorganization may in large part be attributed to the influence of the agency's first Director, Charles Schultz. An economist by training, Schultz reportedly was considerably more concerned about the labor relations side of federal personnel policy than he was about executive development. 38/ Given Schultz's sense of priorities and the fact that the first director of the Executive Development and Labor Relations division, David P. Taylor, had a labor relations background, it is hardly surprising that the staff of about twenty professionals who comprised EDLR initially concentrated primarily on labor relations matters. 39/ Congressional failure to act on the FES

36/ U.S. Congress. Senate. Committee on Post Office and Civil Service. Federal Executive Service. 92nd Congress, 2nd session. Report No. 92-864, to accompany S. 1682. Washington, U.S. Govt. Print. Offc., 1972. p. 12-13.

37/ Despite the fact that no action was taken in 1971 or 1972 on its FES initiative, the Nixon Administration tried again in 1974 to stimulate congressional action on a revised version of the program. In a message to Congress delivered on July 17th of that year, President Nixon proposed the establishment of an Executive Personnel System. Given that the President was forced to resign from office only weeks later, however, it is hardly surprising that this overture never received serious consideration.

38/ Interview with Edward Preston (Assistant Director of Executive Development and Labor Relations/Federal Personnel Policy, OMB, 1974-1982), November 18, 1985.

39/ The inclusion of the labor relations function in this division had not been anticipated by the Ash Council, which had recommended a title of "Executive Personnel." Evidently, a decision subsequently was made to locate within EDLR, which originally had a Labor Management Relations branch alongside two others (Executive Development and Training and Personnel Policy and Compensation), the labor relations responsibilities conferred on the Bureau of the Budget by Executive Order 11491 of October 26, 1969. That order had assigned the Director of BoB, the Chairman of the CSC, and the Secretary of Labor to serve on a Federal Labor Relations Council to decide major Federal labor management policy issues.

proposal did not deter the the CSC and OMB from jointly undertaking to build executive development programs in the various departments and agencies during 1971-1972. But the relative lack of enthusiasm on the part of top OMB officials for such ventures may have contributed to what one agency official later described as the "mixed" results of these initiatives. 40/

OMB's committment to executive development efforts, however, increased notably under Roy Ash, Schultz's succesor as OMB Director, and Frederick Malek, who joined OMB in the capacity of Deputy Director along with Ash in February 1972. Malek in particular placed special emphasis on executive development and sought to establish this as an important Administration priority during President Nixon's second term. 41/ Under his lead, OMB and the CSC embarked in the spring of 1973 on a "more aggressive strategy" to improve executive selection and development processes throughout the Federal government. Among the central components of this strategy were requirements that agencies establish executive development programs and specify short-term executive development goals, and a pilot Federal Executive Development Program (FEDP) of education and interagency work experience for GS-15s. 42/

OMB and the CSC both apparently held high expectations for the FEPD program. According to Edward Preston, whom Ash and Malek had recruited from the IRS to head up OMB's Executive Development and Labor Relations division early in 1974, 43/ the central concept of this program was to take promising personnel recommended by the agencies for training to be become "generalist" top-line managers and

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40/ Malek, Frederick V. The Development of Career Executives - Neglect and Reform. Public Administration Review, v. 34, May/June 1974. p. 232.

41/ See: Malek. Washington Hidden's Tragedy: The Failure to Make Government Work. New York, The Free Press, 1978. p. 21-24, 71-89, 105-117. Also: Malek, Development of Career Executives, p. 230-232.

42/ Malek, Development of Career Executives, p. 232. Malek has described the CSC's role in this venture in the following terms: "[T]he Civil Service Commission has directed agencies to identify their managerial positions; specify the knowledge and skills required for each; plan and execute an individual development program for each incumbent in these positions; and implement a formal 'high-potential' identification system." Ibid.

43/ Preston had played a leading role in devising and overseeing an executive development program for the IRS which Malek regarded as a great success and "an effective model for other agencies." Malek, Development of Career Executives, p. 232.

executives. However, although two or three sessions (involving roughly 25 participants) were held, the initiative evidently did not work as well as OMB or the CSC had anticipated. Preston has suggested that the program failed to take hold for reasons that had invariably undermined similar efforts in the past: many agencies, resisting a perceived challenge to the traditional in-house selection route whereby "subject-matter" specialists are promoted to positions of executive leadership, either declined to participate or proved reluctant to accept trainees who had previously been employed elsewhere. 44/ The then-Executive Director of the Civil Service Commission saw the lack of agency enthusiasm for training executives and moving them to other agencies somewhat differently. In his view, the fact that political appointees tend to remain in government only for a short period (the average is under two years) means that most career executives need high competence in both subject matter and executive management in order to be effective in the career-political relationship. 45/

Executive Development Post-Nixon: OMB's Role in Decline

With the departure Ash and Malek shortly after President Nixon's resignation in August of 1974, OMB's prominence in executive development matters receded considerably. 46/ The later stages of the Nixon Presidency may, in fact, be regarded as the high-water mark of OMB's role as centralized coordinator of of executive development programs in the Federal government. The failure to establish the FEPD on a permanent basis, however, attests to the limited effectiveness of OMB's executive development efforts even in those rare instances in which such efforts have enjoyed the support of top agency officials.

There are some grounds for speculation that the traditional resistance of the line departments and agencies to centrally-coordinated executive development programs may not have been the only obstacle confronting OMB during this period. While the CSC had collaborated with OMB in the establishment and administration of the FEPD as well as other initiatives dating from the Nixon (and early Ford) years, there are indications that several high-placed officials

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44/ Preston interview, November 18, 1985. For background on the FEPD, consult: U.S. Civil Service Commission. Bureau of Executive Manpower. Executive Manpower in the Federal Service, June 1974. p. 5-7.

45/ Phone interview with Bernard Rosen (Deputy Executive Director/Executive Director, U.S. Civil Service Commission, 1965-1975), February 8, 1986.

46/ According to Preston, although EDLR maintained its previous staff strength under the Ford Administration, Ford's OMB Director James T. Lynn did not regard executive development as a high prority. Ibid.

within the Commission were less than pleased with the secondary status accorded the CSC in executive development matters by Reorganization Plan No. 2 of 1970.

The frustration occasioned within the Commission by the vesting in OMB of the "lead role" in this context, for example, was very much evident in a 1975 monograph prepared for the House Government Operations Committee by the recently retired Executive Director of the CSC, Bernard Rosen. Claiming that the stated purpose of the 1970 reorganization with respect to greater OMB involvement in personnel management had not been achieved and that the latter's performance in this arena after five years could "only be rated as weak or non-existent" 47/, Rosen recommended that legislation be enacted "to eliminate the confusion, uncertainty, and duplication inherent in Reorganization Plan No. 2 of 1970, and to clarify the [CSC's] role as the central personnel agency, by terminating [OMB's] responsibility to advise the President on the development of new programs to recruit, train, motivate, deploy, and evaluate top executives." 48/

In 1976, during the second session of the 94th Congress, legislation was in fact introduced in the House which (while falling short of Rosen's proposal to vest exclusive authority in this arena in the Commission) was intended in part to reaffirm the CSC's role in executive development matters. 49/ Hearings on H.R. 12080 disclosed support for the adoption of an even stronger provision on the part of federal employee union representatives, who maintained that OMB's increasing involvement in personnel matters had contributed to a "politicization" of the civil service and a "usurpation" of CSC functions and prerogatives. 50/ However, others suggested that the strains in the relations between OMB and the CSC that had characterized

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47/ Rosen, The Merit System in the U.S. Civil Service, p. 77. The author emphasized that this criticism was not intended as a reflection on the ability of the OMB staff; the lack of progress toward fulfilling the promise of 1970 was rather the predictable consequence of "an inappropriate institutional assignment." Ibid.

48/ Ibid., p. 88-89.

49/ Section 1301(d) of the proposed Civil Service Amendments of 1976 stipulated that: "The Commission shall establish programs and procedures ... to increase the effectiveness of the recruitment, training, motivation, and utilization of career executives within the executive branch."

50/ U.S. Congress. House. Committee on Post Office and Civil Service. Subcommittee on Manpower and the Civil Service. Civil Service Amendments of 1976. Hearings, 94th Congress, 2nd session, on H.R. 12080. Washington, U.S. Govt. Print. Offc., 1976. p. 33, 44 (statement of Clyde Webber, President, American Federation of Government Employees).

the later Nixon years had substantially subsided in the interim. 51/ CSC Chairman Hampton, for his part, while welcoming the provision that would have reaffirmed the CSC's authority with respect to executive manpower management as a "vote of confidence in the Commission's ability in this important area," restated the position in the Executive Order that "this was a shared responsibility with the Office of Management and Budget," and added that the CSC had enjoyed "a close, constructive, and effective working relationship" with OMB in this context. 52/

No action was ever taken by Congress on H.R. 12080, which died in Committee. Yet despite Chairman Hampton's disclaimer that the sharing of executive development functions between OMB and CSC had given rise to any serious conflicts, doubts as to whether OMB had a legitimate role to play in this area evidently persisted. President Carter had entered office promising to reorganize and streamline the EOP, and members of the President's Reorganization Project ("the PRP") subsequently recommended that, in partial fulfillment of this objective, certain OMB "management" functions -- including its executive development function -- be transferred elsewhere. 53/ Neither the OMB Director at the time, Bert Lance, nor Wayne Granquist, the agency's Associate Director for Management and Regulatory Policy, objected to this proposal, which President Carter submitted to Congress as part of Reorganization Plan No. 1 of 1977 on July 15, 1977.

Some Members of Congress voiced serious misgivings about the Carter Administration's proposal to reorganize the EOP. 54/ However, the Senate did not vote to disapprove Reorganization Plan No. 1 of 1977, which subsequently went into effect on October 19, 1977. Some

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51/ Ibid., p. 81 (remarks of Subcommittee Chairman David K. Henderson (D-NC)).

52/ Ibid., p. 3.

53/ In addition to the transferring of OMB's executive development responsibilities to the CSC (along with some of EDLR's labor relations functions, see footnote 22 below), Reorganization Plan No. 1 of 1977 stipulated that the following OMB functions be transferred elsewhere: Administration, to a new Administrative Office in the EOP; statistical policy (except clearance of agency forms), to the Department of Commerce; and, Advisory Committee Management Secretariat, to the General Services Administration.

54/ See, e.g.: Wydler, John W., Thomas N. Kindness, and Arlan Strangeland. In Statement of Additional Views. U.S. Congress. House. Committee on Government Operations. Reorganization Plan No. 1 of 1977. House Report No. 95-661, 96th Congress, 1st Session. Washington, U.S. Govt. Print. Off., 1977.

six weeks thereafter, on December 5, 1977, President Carter issued Executive Order 12027. By virtue of this directive, the step urged by Rosen and others was implemented: authority for providing "overall Executive Branch leadership, regulation, and guidance in executive personnel selection, development and management" (including the establishment and administration of programs to "select, train, develop, motivate, deploy, and evaluate the men and women who make up the top ranks of the Federal civil service") was once again made the exclusive province of the Civil Service Commission. 55/

Shortly after the issuance of Executive Order 12027, six positions which had been assigned to OMB's Executive Development and Labor Relations division were transferred to the Civil Service Commission, and the title of that OMB unit (now with a staff of about thirteen) was changed to the Federal Personnel Policy Division. Information provided by OMB to House and Senate appropriations subcommittees in the spring of 1978, during consideration of the agency's FY1978 budget request, indicated that "executive development" no longer numbered among the formal responsibilities of the division thus renamed. 56/

The Road to CSRA: OMB's Role Terminated

It would be quite misleading to conclude on this basis, however, that OMB had abruptly withdrawn from this arena entirely. For during the same period in which these internal changes at OMB were taking shape, the wheels of civil service reform that would eventuate in the passage of the Civil Service Reform Act of 1978 (P.L. 95-454) and the establishment therewith of the Senior Executive Service (SES) had already been set in motion, and OMB played a prominent role in many phases of that reform effort. Two of the agency's top officials, Wayne Granquist and Howard Messner, occupied key positions in the

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55/ Executive Order 12027, Section 1(a). 42 F.R. 61851. Section 1(c) of the order affirmed that the CSC would "provide primary Executive branch leadership" in other areas in which it had shared authority with OMB, i.e., (1) developing and reviewing programs of policy guidance to the departments and agencies "for the organization of management's responsibility under the Federal Labor Relations program"; and (2) monitoring issues and trends in labor management relations. Principal responsibility for both these functions within OMB also had been assumed by EDLR.

56/ See, e.g.: U.S. Congress. Senate. Committee on Appropriations. Treasury, Postal Service and General Government Appropriations: Fiscal Year 1979. Part 1 — Justifications. Hearings, 95th Congress, Second Session. p. 439-441. The "major work items" of the Federal Personnel Policy Division were listed as follows: personnel legislation; pay systems; labor relations; employee benefits and allowances; and federal staffing.

Federal Personnel Management Project (or the "FPMP," as it came to be called), the inter-agency group formed under the chairmanship of Carter's CSC Chairman Alan K. ("Scotty") Campbell in June 1977 to spearhead the civil service reform initiative. 57/ The professional staff of OMB's Executive Development and Labor Relations division also provided assistance to several of the nine task forces formed under the FPMP to develop various options and alternatives for reforming selected aspects of the Federal civil service system. 58/

Although the seven option papers produced by these task forces during the summer and fall of 1977 covered a wide array of topics -- ranging from equal employment opportunity and affirmative action to federal government labormanagement relations and pay and benefit systems -- several of the proposals emerging from the FPMP dominated the others. The most important of these, if only because so many other FPMP recommendations hinged on its acceptance and implementation, was the proposal to abolish the Civil Service Commission and create in its stead two new entities: the Office of Personnel Management (OPM) to oversee civil service policy and administration, and the independent Merit Systems Protection Board (MSPB) to police the merit system. (These changes were effected by means of Reorganization Plan No. 2 of 1978 of August 11, 1978. 59/) In the view of many project participants, however, the proposal to establish a Senior Executive Service along the lines initially envisaged by the 1955 Hoover Commission was a step of equal if not surpassing significance.

57/ Granquist was Vice-Chairman of the FPMP, while Messner (who had been recruited from the CBO to become Director of OMB's Management Improvement and Evaluation division) was co-chair of its working group. The importance of civil service reform as an element of the Carter Administration's reorganization effort was reflected by Campbell's presence (along with Carter himself, Vice-President Mondale, the Director of OMB, and the Chairman of the CEA) on the President's Executive Committee for Reorganization. For background on the FPMP, consult: U.S. Library of Congress. Congressional Research Service. Federal Civil Service Reform: The Federal Personnel Management Project and Proposed Changes in the Federal Civil Service. A Report by James McGrath, Government Division. March 30, 1978.

58/ Preston interview, November 18, 1985.

59/ The creation of OPM, the MPSB and the Federal Labor Relations Authority (which was charged to oversee labor-management relations and arbitrate labors disputes between Federal employee unions and Federal agencies) by means of Reorganization Plan No. 2 was designed to effect an institutional separation of the administrative, merit system enforcement and appellate review functions that had previously been combined in the CSC. Many critics had maintained that the CSC's performance had suffered because these responsibilities were inherently in conflict with one another.

Indeed, FPMP Chairman Campbell characterized the SES proposal as the "linchpin" of the Carter Administration's personnel reorganization effort. 60/

The basic rationale underlying the SES proposal was set forth in Volume I of the Final Staff Report of the Federal Personnel Management Project (commonly known as the "Ink Report" after the FPMP's Executive Director, Dwight A. Ink). In familiar language that underscored widespread dissatisfaction both with existing executive personnel systems and with the effectiveness of CSC/OMB efforts to foster more efficient and coherent executive development programs in the Federal government, the Ink Report noted that: "Despite the critical need to recruit and develop executives, no fully effective, Government-wide system exists today for selecting, preparing, advancing, and managing the men and women who administer the hundreds of vital programs that effect every citizen, family, and community in the Nation." 61/ The proposed SES system (which embraced all managerial positions at GS-16, 17, and 18 supergrade levels and in Executive Levels V and VI, approximately 9,000 positions in all) was intended to redress this persistent problem in the existing management structure for the top cadre of federal employees. At the same time, it was meant to provide each agency "considerably increased latitude to establish an executive personnel management system to meet its own special needs" 62/ by, for example, minimizing the often artificial distinction between "career" and "noncareer" positions.

60/ Campbell, Alan K. Revitalizing the Federal Personnel System. Public Personnel Management, v. 7, no. 6, January-February 1978. (Transcript of Keynote Address at IPMA International Conference in Chicago, October 3, 1977.) p. 63. In his address to the IPMA, Campbell saw fit to add as a "personal note" that "I don't believe there's going to be any other part of the project in which I have a greater interest [than in SES], having for some twenty years been arguing in favor of changes in the top of the career service." Ibid.

61/ The President's Reorganization Project. Federal Personnel Management Project. Volume I. Final Staff Report. Washington, December 1977. p. 183. (Hereafter cited as: Ink Report.)

62/ Campbell, Revitalizing the Federal Personnel System, p. 64. While placing special emphasis upon the proposed system's capacity to undo the effects of cumbersome procedures and overly restrictive policies which had seriously impeded agency heads' ability to select, motivate, and manage Federal executives, the Ink Report suggested that the SES proposal would help to minimize the effects of two other serious problems in the prevailing system identified by the FPMP: inadequate controls over the size and distribution of the executive cadre, and inadequate protection against political abuse and incompetence. See: Ink Report, p. 183-185.

In the section dealing with the SES, the Ink Report recommended, among other things: that individuals be required to demonstrate managerial cability before entering the Executive Service; that systematic executive development programs be required "with full attention to the necessity for bringing women, minorities, and other excluded groups into the managerial mainstream"; that the agencies establish, under the guidance of OPM, programs to provide for the continued development of those executives already entered in the Executive Service; that such programs give increased attention to long-range planning in preparing executives for positions of greater responsibility and complexity; and, that greater emphasis be placed on the training of managers brought into Federal service from outside the Government. 63/

According to Edward Preston, the professional staff of OMB's Division of Executive Development and Labor Relations had a hand in the process whereby the executive development provisions of the SES proposal took shape and subsequently helped draft portions of what became Title IV (Senior Executive Service) of the Civil Service Reform Act, which was introduced in Congress on March 3, 1978 and signed into law by President Carter on October 13th of the same year. 64/ With the enactment of this legislation, however, OMB's authority over executive development programs -- which already had been officially rescinded by means of Executive Order 12027 of December 1977 -- was effectively terminated. As part of the general responsibility for the supervision and oversight of the Senior Executive System vested in it by CSRA, the Office of Personnel Management was directed to establish programs for the development of candidates for and within the SES along the lines recommended by the FPMP, or to "require agencies to

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63/ Ink Report, p. 199-200 (Recommendation No. 89), p. 127-128 (Recommendation No. 48), p. 185.

64/ The various FPMP recommendations for reform of the civil service were officially reviewed by a six-person group (comprised of Campbell and Jules Sugarman from the CSC, Granquist and Messner from OMB, and two representatives from the White House Domestic Council), which subsequently oversaw the drafting of the Civil Service Reform Act. The FPMP proposals bearing on the SES do not appear to have been amended in any important respect in the course of this review process; given Campbell's special interest in this portion of the project, it seems unlikely (despite his repeated claims regarding the autonomy of the project task forces) that the proposals generated by the FPMP in this particular would have not have reflected his imprint.

Those provisions of CSRA bearing on executive development for and within the SES did not attract much Congressional attention, although Congress did adopt an amendment, originating in the House, to upgrade the entrance requirements for the SES by mandating that not more than 30% of individuals serving in the system at any one point in time have less than 5 years of Federal civil service experience.

establish such programs which meet criteria prescribed by the Office.' 65/ By September of 1979, OPM had established an Office of Executive Personnel and Management Development (EPMD) and taken a number of preliminary steps to carry out its executive development responsibilities. 66/

During this same time period, the staff strength of the newly re-named Federal Personnel Policy Division within OMB was further reduced from its post-Executive Order 12077 level (to about 8). In the latter stages of the Carter Administration and on into the early Reagan years, this division retained some responsibility in the area of Federal employee pay and compensation, for monitoring legislation relating to personnel matters, and for various aspects of CSRA implementation. 67/ However, the gradual chipping away of its functions both with respect to executive development and for government-wide labor relations policy had deprived it of a mandate sufficient to warrant its continuation. Finally, in July of 1982, as part of a larger reorganization of OMB carried out under Deputy Director Joseph Wright, the Federal Personnel Policy Division was abolished. 68/ Most of its remaining staff and functions were were transferred to the Justice, Treasury, and General Management division on the agency's budget side, while Edward Preston, who had headed EDLR/FPPD on a continuous basis from 1974 until the Division's demise, assumed a position on the White House staff.

Conclusion

The two detailed case studies of OMB's role in the spheres of manpower ceilings and executive development shed some valuable light on the central question posed at the outset of this report -- the question, namely, of the basis upon which the assignment of functions to the central management agencies might best be predicated. How well a central management agency is able to fulfill a functional responsibility would seem to depend in good part on three factors or considerations: the close identification of the function with a primary statutory responsibility of the agency; the close relation of the administration of that function to other agency processes; and the acceptance of the assigned funcitonal responsibility by those

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65/ 5 U.S.C. §3996.

66/ For a generally favorable review and assessment of OPM's executive development efforts in the period from July 1979 to mid-1984, consult: U.S. General Accounting Office. Progess Report on Federal Executive Development Programs. GAO/GGD-84-92. August 15, 1984.

67/ Preston interview, November 18, 1985.

68/ OMB Memorandum No. 82-49, July 11, 1982.

most immediately effected. These factors help to explain why responsibility for setting and supervising manpower ceilings became institutionalized at OMB while responsibility for executive development was unable to take hold in the agency and could not survive reorganizations and reductions in staffing. These factors also stand out in four lessons that the two case studies may be said to teach use about the assignment of central management functions to OMB:

> 1) The setting and supervision of manpower ceilings is a clearly-defined, on-going function that is easily tied to the budget process on a year-to-year basis. It deals with relatively "hard" numbers that can be readily converted into dollars. Therefore, it comfortably fits the "mental set" of the OMB budget examiners and is amenable to the practice of setting limits and targets that is built into OMB's role in the budget process.
>
> In contrast, executive development is a broad concept susceptible to continual changes of direction. Executive development goals are often vague, results are difficult to measure, and the product of the training extends out into the distant future. The entire process fits in poorly with the year-to-year orientation of the budget process, which tends to drive most of OMB's activities, and the fact that measuring the impact of executive development is made difficult by the "softness" of the data also makes it something of an unhappy "fit" with OMB's predominant orientation.
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> In general, the question of how comfortably management improvement activities and procedures comport with the activities and procedures of the budget examination process seems to be a decisive one for the purposes of assessing the likelihood that a given management function will become "institutionalized" at OMB. The executive development function was always housed on the agency's "M-side," at a distance removed from the budget examiners; the fact that its objectives and procedures are not amenable to easy incorporation into the budget review process helps to explain why the function did not take firm hold at OMB.
>
> 2) The manpower ceiling function has as its basic orientation the control and reduction of personnel costs through the establishment of limits on the number of employees on the Federal government's payroll. Clearly, this is a rough way to constrain the costs of the workforce (more subtle ways like average grade targets have also been used from time to time on a selective basis), but it does have the virtue of simplicity and is in harmony with OMB's budget control function. In contrast, executive development stresses capacity-building, a complex process aimed at enhancing the ability of line managers to manage their agencies. This orientation stands quite opposed to the predominant cost-containment function of OMB and, as a consequence,

its importance is easily diminished within the agency in the year-to-year struggle to balance the budget by cutting expenditures.

3) Manpower ceilings have come to be an accepted and deeply-entrenched part of the budgetary process. Because it is well institutionalized, the process enjoys authority in its own right; relatively speaking, it is insulated from broad policy changes caused by shifting presidential priorities or support within the top White House staff. In contrast, the location of the executive development function in OMB was never widely supported by Civil Service Commission or by the departments and agencies. During its 9 to 12-year history at OMB (depending on how one counts), the level of activity in the unit responsible for executive development rose or fell depending on the importance key presidential assistants attached to such initiatives. When interest and support eventually evaporated, the executive development unit was abolished. Finally, as both a measure and cause of institutionalization, it is important to mention the authority upon which the functions rested. The manpower ceiling function was a clearly defined responsibility of OMB underpinned on a continuous basis by a series of circulars while executive development efforts were more sporadic and the function was not supported in nearly so authoritative a fashion.

4) The "inclusiveness" of a function also appears to make a difference in whether it becomes institutionalized or not. "Inclusiveness" refers to the extent to which there is an agreed-upon division of labor for a function both among the central management agencies and between the latter and the line agencies and departments. Although it is true that line officials in the departments and agencies have been known to object to the concept, centrally-mandated personnel ceilings have been used for some time and the functional division of labor has become well-established -- OMB sets ceilings and OPM collects data in support of OMB leadership in this area. In the case of executive development, the roles of OMB, CSC/OPM, and the departments and agencies were never firmly established, in part because each felt it had a legitimate role to play in every phase of the various programs.

These four lessons may provide some useful guidance in attempting to gauge the feasibility of assigning other functions that relate to Federal workforce management to OMB. There is every reason to expect that the agency will continue to be called on to assume responsibilities that have significant workforce implications. For example, the Reagan Administration has announced its intention to initiate, under OMB's overall guidance and supervision, a comprehensive, government-wide productivity improvement program along the lines recently recommended by the Grace Commission and others. 69/ Under the Carter Administration, contrarily, the Office of Personnel Management had served as the Federal focal point for productivity enhancement, 70/ and some would argue that this function is more in keeping with OPM's mission than it is with OMB's. The merits of the initiative itself aside, whether OMB will be able to "institutionalize" the productivity improvement function the Reagan Administration proposes to confer on it is a reasonable concern -- all the more so for those who would look to OMB to play a lead role in improving workforce management capabilities in the Federal government.

The development of means and measures to promote Government productivity improvement has been a recurring problem since 1970, and the Administration's program is destined to focus attention on that problem once more. Other salient issues of workforce management -- for example, the availability and effectiveness of training and development programs in the Federal government, particularly for the increasing number of political appointees being brought into Government service, or the larger question of the relationship between the levels and kinds of manpower used and the organizational capacity and effectiveness of Federal departments and agencies -- seem likely to loom large in the future.

To date, neither OPM nor OMB has demonstrated an ability to provide sustained leadership in these important areas. Recognition of this fact has prompted many observers to conclude that the institutional framework necessary to provide a comprehensive and coordinated workforce management system for the Federal government is lacking. Although some might argue that this is a vain and perhaps not even a desirable quest, the question of how best to go about establishing such a framework within the central management core of the Executive branch is likely to engage practitioners and commentators alike for some time to come.

69/ For background on the Administration's proposed productivity improvement program, consult: Dineen, Carol. Productivity Improvement: It's Our Turn. The Bureaucrat, vo. 14, no. 4, Winter 1985/86. p. 10-14.

70/ See the account provided in: U.S. General Accounting Office. Increased Use of Productivity Management Can Help Control Government Costs. GAO/AFMD-84-11, November 10, 1983. p. 23-25.

THE OFFICE OF MANAGEMENT AND BUDGET AND INTERGOVERNMENTAL MANAGEMENT

Sandra S. Osbourn*

INTRODUCTION

The Office of Management and Budget has been described as ". . . the executive unit with the longest sustained interest and involvement in intergovernmental relations." 1/ Since the 1950's, when intergovernmental management first became a subject of analysis and discussion, OMB has been seen as a potential force for implementing current concepts of "reform" or "rationalization" in intergovernmental management. 2/ In general the agency has not lived up to the expectations of those who have urged that it occupy a preeminent place in traditional intergovernmental management and issues.

Prior to 1981, the direction of intergovernmental management activities can be described as a continuous trend line in which various factions might disagree on details or emphasis, but in which the fundamental assumptions and concepts were the same. Beginning in 1981, however, discussions of intergovernmental management take place in a new context whose characteristics are just beginning to emerge. The traditional activities of OMB in intergovernmental management have been overshadowed, if not superseded, by a new role as the leading advocate of a new and very different intergovernmental agenda. Vestiges of the old OMB intergovernmental management functions and structure are still in place, but it is not clear that they are significant any more. Some items on the old agenda--for example, rationalizing the Federal field structure and encouraging block grants--are still there, but with different objectives and motivations. One observer recently commented that:

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1/ Wright, Deil S. Understanding Intergovernmental Relations. Monterey, Brooks/Cole Publishing Co., 1982. p. 147.

2/ For example, in 1975 the Study Committee on Policy Management Assistance noted that "The Office of Management and Budget intergovernmental programs appear to be a mechanism in place for intergovernmental coordination."

> This structure is producing new ideas, concepts and initiatives that are at best vague images in our current management practices. New decision processes and ways of thinking about program development and implementation are necessary. . . . The opposing poles of judicial and congressional/executive decisions have created an additional stimulus to fermentation in intergovernmental relations. Management, whether federal, state or local, in this context is uncertain in process, technique, substance and context. 3/

To those whose expectations are still shaped by the dialogue and agenda of the 1960s and 1970s, OMB's role in intergovernmental management may seem to have shrunk. Within the new frame of reference however, it can be seen that OMB has been in the forefront of the Reagan administration's intergovernmental campaign. As one observer has noted:

> Intergovernmental relations in 1984 are very different from the way Ronald Reagan found them when he took office. . .the administration is responsible for consolidating and accelerating the change in political opinion that has so rapidly 'dated' the common assumptions about intergovernmental relations of four years ago. 4/

OMB has been a major agent in pushing the Reagan administration's agenda. While this has made it a major intergovernmental actor, it may have weakened its ability to serve as an impartial broker in traditional intergovernmental management activities.

One difficulty in evaluating OMB's role in intergovernmental management is that some expectations of OMB may be mutually exclusive. For example, one critique published in 1975 comments that OMB is weakened because it:

> . . .consciously avoids the political dimensions implicit in the field of intergovernmental relations, and by so doing reduces itself to dealing with issues at the margins of presidential, as well as gubernatorial and mayoral, concern. The Bureau does

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3/ Edner, Sheldon. The "M" in SIAM. SIAM Intergovernmental News, v. 9, Autumn, 1985. p. 4.

4/ Peterson, George E. Federalism and the States: An Experiment in Decentralization. In Palmer, John L. and Isabel V. Sawhill, eds. The Reagan Record: An Assessment of America's Changing Domestic Practices. Cambridge, Bollinger Publishing Company, 1984. p. 258.

> not seek to transform the federal system in significant ways, but confines itself to routine and typical measures designed to tidy it up. 5/

More recent critiques, however, express concern that OMB's identification with the intergovernmental ideology of the current Administration, and its role as point man for the Administration's intergovernmental policies, may have weakened it in a different way. Two major elements of the Administration's intergovernmental policy were regulatory relief and block grants, according to an early self-evaluation of the Administration's approach:

> Under President Reagan's federalism concept, block grants, regulatory reform, and greater sensitivity to State and local desires will be used to reverse the trend towards greater control over State and local programs by the Federal Government. 6/

OMB has been strongly identified with both of these intergovernmental objectives and has served as the Administration's primary agent in orchestrating government-wide compliance with these objectives. Some observers have expressed concern that this close identification may damage its ability to handle intergovernmental management issues:

> In regulatory reform, Reagan's OMB has functioned not simply as a staff arm of the president but has usurped statutorily assigned policy functions of agencies to enforce the Reagan agenda centrally. . . . It lacks technical expertise in areas for which . . . agencies . . . are responsible, but it is expert in terms of political dimension of regulatory reform and the Reagan agenda. 7/
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> What once was regarded by many as a politically neutral technique for simplifying aid management [block grants] is now likely to be viewed as an instrument of conservative ideology. Because of their narrower political base, further consolidations may prove even more difficult to establish. 8/

5/ Bombardier, Gary. The Managerial Function of OMB: Intergovernmental Relations as a Test Case. Public Policy, v. 23, Summer 1975. p. 351.

6/ U.S. Executive Office of the President. Federalism: the First Ten Months; a Report from the President. Washington, 1981. p. 1.

7/ Newland, Chester A. Executive Office Policy Apparatus: Enforcing the Reagan Agenda. In Salamon, Lester M. and Michael S. Lund, eds. The Reagan Presidency and the Governing of America. Washington, The Urban Institute Press, 1985. p. 163.

8/ Beam, David R. New Federalism, Old Realities: The Reagan Administration and Intergovernmental Reform. In Salamon and Lund, The Reagan Presidency. p. 418.

OMB's close association with these and other Reagan Administration intergovernmental objectives indicate that intergovernmental management places the agency on the horns of a dilemma. It may be that to the extent that OMB stays on the edges of intergovernmental issues, concentrating on "tidying up" the system, it will be criticized for not getting to the heart of the matter. To the extent that it does go to the heart of the matter, and becomes identified with the political tensions inherent in even the most mundane intergovernmental relationships, it loses its image as a neutral facilitator and manager.

In 1977, the Advisory Commission on Intergovernmental Relations (ACIR) identified five central management activities assigned to OMB that form the skeleton on which intergovernmental functions take shape. These responsibilities, plus the fact that OMB exists and does not have to be created, have been the rationale in the past for viewing OMB as the primary potential intergovernmental management agent in the executive branch. The ACIR inventory is summarized below:

> 1. The administration of government-wide grant management procedures. The development and effective oversight and implementation of management circulars and other procedures (including the joint funding process) which are intended to coordinate, simplify, and decentralize the administration of Federal assistance programs.
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> 2. Intergovernmental liaison. Communication between the President and his staff and officials of State, county, and municipal governments. Such communications might be relatively unstructured or highly structured.
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> 3. Development of domestic policy. Representation of State, city, and county concerns is critical.
>
> 4. Preparation of the President's budget. Most budgetary decisions have direct or indirect intergovernmental implications.
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> 5. Legislative reference. Should identify provisions likely to impact upon State and local governments, and should aid in the implementation of a consistent Administration intergovernmental policy and management strategy. 9/

9/ U.S. Advisory Commission on Intergovernmental Relations. Improving Federal Grants Management. (Report A-53) Washington, U.S. Govt. Print. Office, 1977. p. 271.

All of these functions are still performed by OMB. All, except for the administration of government-wide grant management procedures, are shared with White House staff, and to some extent with the Cabinet and the agencies and departments.

In this same 1977 study, ACIR identified three fundamental issues that need to be kept in mind with regard to intergovernmental management. Since these issues are still pertinent, they are summarized below:

> 1. Can and should a much greater degree of centralized, hierarchic, organizational control be exerted over the performance of Federal activities having an impact on intergovernmental relations? With specific reference to OMB: At the national level, it is raised in connection with the appropriate role of OMB as the arm of the President. Many regard the OMB as the 'proper' location of central management activities, and believe that it should exert considerable leverage upon the departments in attaining conformance to its circulars and other management initiatives. The opposing view holds that program management is at the core of Federal domestic administration and that it must be viewed primarily as a departmental and agency, rather than a Presidential responsibility. Where the first concept places the President at the top of an adminstrative pyramid, the second places him in a secondary role, emphasizing instead the links between the Secretaries or bureau chiefs, on the one hand, and the congressional committees which have authorized and oversee their programs, on the other.
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> 2. Related to the above, but couched in more specific organizational terms, can and should there be a unification of all Federal central management and policy development activities that impact on intergovernmental relations?
>
> 3. What do such activities actually include at the present time? Existing assistance and assistance-related activities? Or all these, as well as various direct Federal activities and national economic matters (in short, the bulk of the Federal domestic sector)? 10/

Questions arising from this review of OMB and intergovernmental management, which are identified but not answered in this report include the following:

10/ Ibid. p. 262-264.

Was the traditional intergovernmental management agenda valid, and if so are its prescriptions suitable to today's intergovernmental realities? To what extent has the traditional agenda been implemented, but with a new form and a new name?

Is it in the interest of the Congress as an institution to have OMB fulfill its traditional intergovernmental management mandate?

Can OMB reconcile the political aspects of the mandate with the neutral, professional aspects?

HISTORY

Since 1939, when the Bureau of the Budget became a part of the newly established Executive Office of the President, the agency has at different times and in different ways been involved with intergovernmental relations. Intergovernmental management at any given time might include some or all of the following activities: intergovernmental liaison, coordination of Federal agencies' administration of intergovernmental programs, coordination and standardization of Federal regional activities and structures, and developing and implementing a unified view of Federal intergovernmental policies.

Field Service

In the early years, the intergovernmental focus was the BOB field offices, which were charged with coordinating Federal aid programs and with communicating with State and local officials. The funding for these offices was discontinued by the Congress in 1953, and the offices were terminated. According to one assessment, the field offices were terminated because "Apparently some members of Congress were suspicious of the role of the staff-arm of the President reaching into cities outside of Washington." 11/

Congressional concern over BOB presence in the field revived in the late 1960's. The fiscal year 1967 and 1968 budget requests for the Bureau included a request for funds to reestablish a field service whose purpose would be to:

1. collect and disseminate information for the President and the Bureau;

11/ U.S. Advisory Commission on Intergovernmental Relations. Fiscal Balance in the American Federal System. Vol. 1. Washington, U.S. Govt. Print. Off., 1967. p. 193.

2. provide assistance to Federal agencies in the coordination of their local efforts; and

3. serve as field-level representative for the Executive Office of the President. 12/

That there was some concern over the BOB field presence was clear in the Director's comment that "Bureau field staff would in no sense be 'czars' over the local operation of Federal programs." 13/ The request for appropriations for field offices was denied. One commentator on the various conflicts inherent in Federal regional administration wrote, with regard to Congressional opposition to the field offices:

> Legislators regard strong regional officials responsive to chief executives and their cabinets as executive attempts to invade legislative districts and usurp the representative function of legislative bodies. In like fashion, local control of administrative programs could conceivably weaken the representative basis of legislative institutions, a development that men of goodwill may fear for quite public-spirited reasons. 14/

Creative Federalism

Whether the intergovernmental relations component of BOB's activities would have developed beyond the tentative emergence of communication and coordinative activities through the Field Service cannot be known. The demands of World War II forced BOB concern over intergovernmental relations into a backwater. It did not emerge until the floodwaters unleashed by Lyndon Johnson's Creative Federalism created a crisis in management and coordination to which the Bureau was forced to respond.

12/ U.S. Congress. House. Committee on Appropriations. Subcommittee on Department of Treasury and Post Office and Executive Office Appropriations. Hearings, 89th Cong., 2nd Sess. Wash., U.S. Govt. Print. Off., 1966. p. 730-731.

13/ Ibid, p. 730.

14/ Kaufman, Herbert. Administrative Decentralization and Political Power. Public Administration Review, v. XXIX, Jan./Feb. 1969. p. 9.

The operations of the federal system changed dramatically during the 1960's, and these changes demanded a response from BOB. The major changes were summarized in the testimony of the Director of BOB before the Senate Subcommittee on Intergovernmental Relations:

> . . . recent legislation has inaugurated a range of programs whose characteristics create a new dimension for Federal management and for intergovernmental relations. Under these programs the Federal Government--
>
> > Directly participates in specific projects in States and communities;
> >
> > Acts as a coequal partner with State and local governments in carrying out these projects;
> >
> > In many cases works with a number of local governments organized into special groups.
>
> Moreover, and very important, these programs usually require actions by many Federal agencies, rather than a single one. 15/

This "new dimension" in intergovernmental relations created stress and confusion in management, implementation, and accountability. The Johnson administration was criticized by other "partners" in the federal system, including State and local officials and members of Congress. Gary Bombardier summarized the critique:

> In short, the President was increasingly staking his reputation in domestic affairs on the success or failure of new grant-in-aid programs. . . by the middle of the decade criticism was widespread. State and local officials were raising their voices against the proliferation of agencies and programs and the lack of sufficient funds to follow through on them. Within the departments and agencies of the federal government, there was a growing recognition of the gap between legislative promise and administrative performance. Criticism was also mounting in Congress. The dominant motif of what had begun as an experiment in 'creative federalism' was chaos and confusion. 16/

15/ U.S. Congress. Senate. Committee on Government Operations. Subcommittee on Intergovernmental Relations. Creative Federalism. Hearings on S. 3509 and S.J. Res. 187, 89th Congress, 2nd sess., Part 1, November 1966. Washington, U.S. Govt. Print. Off., 1967. p. 388. Hereafter cited as Creative Federalism Hearings.

16/ Bombardier, Gary. The Managerial Function, p. 321-322.

Proposals for a solution to these problems varied. Senator Muskie and a Task Force on Government Operations appointed by President Johnson in 1966 both recommended that a new unit be created within the Executive Office of the President, but this was not done. Instead, much of the responsibility was placed in the Bureau, on the grounds that it was the only existing unit capable of doing the job. BOB Director Schultze, in comments at the Creative Federalism hearings, identified four functions of the Bureau that facilitated an intergovernmental management role:

1. The budget process. Schultze said that weaknesses in coordination, interagency friction, and interagency problems were identified during the budget process and that these problems were either solved by the Bureau or referred to White House staff and, if necessary, to the President.

2. Legislative reference. Schultze said that the legislative reference function offered the opportunity to spot coordination problems before they are enacted into law.

3. Office of Management and Organization. This Office's function related to the problems of government organization and interrelationships and identifying particular problems of coordination in handling them.

4. Staff adviser to the President. Bureau personnel, according to Schultze, had standing instructions that problems of interagency friction and similar problems were "to be brought to the attention of top Bureau officials for whatever action is deemed necessary." 17/

The Bureau responded to the intergovernmental crisis in a number of ways. Activities undertaken during the late 1960s included the following:

1. Government reorganization.

2. A fact-finding survey of the state of intergovernmental relations.

3. Categorical grant program consolidation and simplification.

4. Consistency in federally-encouraged planning agencies' jurisdictions and boundaries.

17/ Creative Federalism Hearings, p. 400.

5. Improving Federal, State, and local statistics.

6. Planning, programming, and budgeting.

7. Consultations with State and local governments.

8. Coordination and consultation among Federal agencies.

Despite this flurry of activity, the Bureau continued to be criticized for not resolving the "management crisis." Dwight Ink wrote in a typical comment that:

> The BOB has failed to do an effective job of seeing that resources are allocated by departments in support of multi-purpose projects, even though these broad-gauged efforts are badly needed in combating the fragmentation and compartmentalism of many federal aid programs. 18/

Many of the Bureau's efforts, beginning in the late 1960s, were attempts to "rationalize" or "coordinate" the "fragmented" Federal aid system, either at the Washington end or at the receiving end. Although the Bureau encouraged categorical grant program consolidation and simplification, it had little success. The Joint Funding Simplification Act made an attempt to allow administrative combination of related categorical grants into a single package, without disturbing the substantive requirements of individual programs. Congressional reaction to the attempt was less than enthusiastic, according to Gary Bombardier:

> In their [Government Operations Committees] view either the legislation would not affect the substance of programs and therefore was not necessary, or it would affect those programs and therefore could be criticized as interfering with the work of the legislative committees of Congress. They recognize that so-called 'irrationalities' of the grant-in-aid system stem from deliberate congressional action over a period of years, and they have not been inclined to provide the Bureau with authority that could be used to alter the system in fundamental ways since the Congress as a whole has shown itself to be essentially content with the system. 19/

18/ Ink, Dwight A. A Managment Crisis for the New President: People Programs. Public Administration Review, v. XXVIII, Nov./Dec. 1968. p. 550.

19/ Bombardier, Gary. The Managerial Function, p. 335-336.

The Intergovernmental Cooperation Act of 1968 (P.L. 90-577; 82 Stat. 1098), which has been called "the first Congressional effort specifically aimed at improving the administration of Federal grant-in-aid programs," 20/ was strongly supported by the Bureau. The Act was a composite of "reform" proposals that had been considered by the Congress over a number of years. It addressed issues such as requirements for separate bank accounts and single State agencies, better information for Governors and State legislators concerning grants coming into their States, and coordination of Federal programs having areawide and intergovernmental significance. Implementation of the Act was a major goal of the Federal Assistance Review program undertaken by the Bureau during the Nixon Adminsitration.

New Federalism

It has been said that Richard Nixon "went farther than any president prior to Ronald Reagan in seeking intergovernmental restructuring." 21/ The Nixon Administration continued the drive toward coordination, rationalization, and decentralization of the Federal aid system that had started in the Johnson Administration. In addition, however, this Administration added a new emphasis on devolution of power and authority to State and local governments through general and special revenue sharing. The Bureau, which became the Office of Management and Budget during this Administration, continued to take the lead in the activities inherited from the Johnson Administration. The agency was less prominent in the drive to make more fundamental changes in the federal system; the lead role here was shared at various times with the Urban Affairs Council, the Domestic Council, the White House Office of Intergovernmental Relations, and other White House policy bodies.

As Lyndon Johnson's creative Federalism gave way to Richard Nixon's New Federalism, the Bureau continued to review options for strengthening intergovernmental management. In 1967, a Steering Group on Evaluation of the Bureau of the Budget concluded that the Bureau would not be able to handle new responsibilities in intergovernmental relations unless it was reorganized. These conclusions became the rationale for a series of reorganizations that culminated in Reorganization Plan No. 2 of 1970. The intent of this reorganization was to strengthen the management component of the Bureau, and this new emphasis was reflected in the agency's new

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20/ U.S. Advisory Commission on Intergovernmental Relations. Improving Federal Grants Management, p. 98.

21/ Haider, Donald H. Intergovernmental Redirection. Annals, v. 466, March 1983. p. 170.

name--the Office of Management and Budget. This plan divided management and policy responsibilities between a Domestic Council (concerned with what the government would do) and OMB (concerned with how and how well the government's work was carried out). OMB was given more responsibility with regard to fiscal analysis, program performance evaluation, interagency cooperation in the field, the improvement of government organization and management, and executive manpower development. Later, in 1973, a separate Division of Intergovernmental Relations was established.

The Nixon Administration came into office determined to rationalize, coordinate, and decentralize the systems through which Federal programs were administered. It drew on the reviews and studies that had been undertaken late in the Johnson Administration, many of which emanated from and focused on the role of the Bureau. For example, one of the Administration's first steps was to formalize and expand the system of Federal Regional Councils initiated in 1968 on a pilot basis by the Bureau. Additionally, ten common regions were designated for the field structures of the major domestic agencies. The Bureau was given the responsibility for monitoring adherence to the common regions and for liaison with the FRCs.

At the same time, a three-year Federal Assistance Review (FAR) program, under the leadership of the Bureau, was charged with encouraging Federal agencies to decentralize, streamline, and simplify their relationship with each other and with State and local governments. The management objectives of the FAR program included the following:

1. Common regional boundaries

2. Development of the Federal Regional Councils.

3. Decentralization of program and administrative authority to regional and field officials.

4. Greater reliance on State and local governments.

5. Reduction in processing time.

6. Red tape cutting, on a program-by-program basis.

7. Consistency in procedure by function--that is, standardizing procedures and requirements for functions common to a number of programs, such as accounting and auditing.

8. Joint funding simplification--administrative measures to permit funds from two or more related grants to be managed by the recipient as a consolidated grant.
9. Grant consolidation.
10. Implementation of the Intergovernmental Cooperation Act. [22]

Most of these objectives were implemented in the individual agencies. However, the Bureau was responsible for monitoring FAR activities and for developing standard procedures for the agencies to use. This was done through a series of management circulars such as those listed below.

A-85. Prescribed a procedure for Federal agency consultation with chief executives of State and local general purpose governments in advance of the issuance of new regulations that would have an intergovernmental effect. Superseded by Executive Order 12044 in 1977. Revoked by Executive Order 12291 in February 1981.

A-87. Established uniform principles for determining costs applicable to grants and contracts.

A-95. Established a four-part procedure intended to involve State, and local governments and certain others in the evaluation, review, and coordination of Federal and federally-assisted programs and projects before they are approved. Superseded by Executive Order 12372 in July 1982.

A-97. Encouraged intergovernmental cooperation in the provision of services to State and local governments.

A-98. Standardized reporting form that required Federal agencies to provide information on their grant-in-aid activities.

A-102. Established uniform administrative requirements for grants-in-aid to State and local governments. Currently being revised.

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[22] U.S. Department of Health, Education, and Welfare. Office of the Secretary. Federal Assistance Review; a Special Report. Washington, U.S. Govt. Print. Off., 1972. p. 67-68.

A-111. Vehicle for administering the Joint Funding Simplification Act of 1974. Suspended in March 1983.

Gary Bombardier pointed out a major flaw in the use of the management circular tool by the Bureau--a criticism that would be reiterated in later years when BOB became OMB:

> One problem common to all the initiatives is that the Bureau has no procedure for monitoring departmental compliance with its circulars. Circulars state policy, but they do not contain self-enforcing mechanisms and the management component of the Bureau is far too small to monitor performance systematically. 23/

A critique of OMB's administration of Circular A-85 noted that OMB almost always exempted agencies from the provisions of the Circular whenever requested, and refused to clarify ambiguous language in the Circular which created many compliance questions.

During the second Nixon term, responsibility for administering several of these circulars, along with the personnel involved, was transferred from OMB to the General Services Administration, where they were placed in a new Office of Federal Management Policy. In 1975, at the direction of Congress, the OFMP functions, and most of the personnel, were transferred back to OMB. The conference report language on this move said that:

> The conferees, in providing funding and manpower to OMB to support the transfer of certain government-wide management and financial policy functions from the General Services Administration, are emphasizing the sense of the Congress that these policy activities should be continued. Representatives of state and local governments have demonstrated a need for continuation of these activities which are designed to simplify and provide improved government-wide guidance and coordination of federal assistance programs. 24/

The transfer was implemented on December 31, 1975, through Executive Order 11893. The various functions of the Office of Federal Management Policy were placed into different divisions of OMB; only

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23/ Bombardier. The Managerial Function. . ., p. 331.

24/ U.S. Congress. House. Committee of Conference. Making Appropriations for Fiscal Year 1976: Conference Report to Accompany H.R. 10647. Washington, U.S. Govt. Print. Off., 1975. (94th Congress, 1st sess. House. Report No. 94-718) p. 19.

the Joint Funding program was placed in the Division of Intergovernmental Relations and Regional Operations. This diffusion of OMB's intergovernmental management responsibilities recurs throughout the history of the agency.

Several studies undertaken in the mid 1970s found little to praise in OMB's intergovernmental management performance. The Advisory Commission on Intergovernmental Relations found that OMB's intergovernmental agenda ". . . has still been only partially implemented," and that its role in the intergovernmental arena ". . . did not grow, but has fragmented and divided." 25/ ACIR attributed these failings to continuing weakness in the management component of OMB, and identified five reasons for this problem:

1. The lack of a strong, continuing White House interest.
2. The concentration of the attention and resources of OMB's leadership on budget preparation and review.
3. A high level of turnover among those in policy positions in OMB.
4. Tension between the budget and management divisions within OMB.
5. Differences of workflow and style in the budgetary and legislative area on the one hand and management improvement on the other. 26/

During the same period, Donald C. Stone wrote that:

> If OMB is to fulfill its historic role as the management arm of the President, it must be restructured and partly restaffed. Functions concerned with overall policy management, capacity building, reorganization, coordination, and evaluation--including intergovernmental administration--must have an equal place with budget processing in the OMB power structure. 27/

25/ U.S. Advisory Commission on Intergovernmental Relations. Improving Federal Grants Management, p. 167.

26/ Ibid, p. 169.

27/ Stone, Donald C. Achieving a Capable and Manageable Federal System. Public Administration Review, v. XXXV, December 1975. p. 735.

ACIR summarized the three main strategies that were being proposed to improve the handling of the management function within the Executive Office of the President. One strategy focused on internal reorganization within OMB to strengthen the handling of intergovernmental and interagency problems; ACIR pointed out that OMB had been restructured three times in the past eight years with little effect. The second strategy would locate most management responsibilities in a new Executive Office management agency or in another department, such as GSA. The third strategy argued that procedure, rather than structure, was significant, and that the involvement of the management section in OMB's budgetary and legislative review processes should be the goal. 28/

The Carter Administration

During the Carter Administration, most intergovernmental strategy setting and policy making was placed with one Special Assistant to the President who had two titles: Assistant for Intergovernmental Relations and Cabinet Secretary. OMB continued to work on a "piecemeal approach to intergovernmental reform," focusing on such areas as Federal planning requirements, sharing Federal audit plans, and simplification of the grant process in three areas: application and reporting, regulation revision, and grant payments. OMB was involved in assessments of the A-95 review process; no final action resulted from this review. Beginning in 1977, OMB began to assess the effectiveness of the Federal Regional Councils; eventually, in 1979, it was decided "that a linkage between the executive office and the regions was needed and that it was better to sustain the FRC presence than to dissolve it and attempt to recreate it at some later date." 29/ OMB's role with regard to agency regulations was strengthened and expanded, laying the groundwork for more drastic changes when the Reagan Administration came into office.

Assessments of OMB's role in intergovernmental relations at this point echoed earlier criticism. The General Accounting Office, in a 1979 review of developments in intergovernmental relations, criticized OMB's leadership role:

> The President and the Congress most probably will continue to take steps to change Federal agency administrative organizational structures and procedures to distribute Federal assistance. Many such efforts in the past have been reactions to the perception that OMB is unable and/or unwilling to control the responses and reactions of the Federal agencies. Our reports and ACIR reports have said OMB's leadership role should be

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28/ U.S. Advisory Commission on the Intergovernmental Management. Improving Federal Grants Management, p. 170.

29/ Shapek, Raymond A. Managing Federalism: Evolution and Development of the Grant-in-Aid System. Charlottesville, Community Collaborators, 1981. p. 222.

> strengthened. Congressional staffs, State and local officials, and the staff of the officials' national associations have on occasion been critical of OMB's lack of responsiveness. 30/

Raymond Shapek, after an exhaustive study of intergovernmental management, commented that:

> Every study of Federal assistance has called for the establishment of a national focal point to coordinate the assistance effort. While OMB is a natural location for such an enterprise, it is evident that OMB has not sought vigorously this responsibility. The Congress, state and local leaders, and the public interest groups, all have been critical of OMB's lack of responsiveness. . . . Until domestic policy commands presidential attention in the same manner as foreign policy, presidents will continue to ignore the complex problems of the intergovernmental system. 31/

The 1980 election brought into the White House a president determined to reshape domestic policy and to make this reshaping a primary feature of his administration. This determination would put OMB in the forefront of intergovernmental activities, but the intergovernmental agenda was so different that it could scarcely be recognized.

OMB AND INTERGOVERNMENTAL MANAGEMENT TODAY

Prior to 1981, most intergovernmental reform proposals would have simplified the management of intergovernmental programs. They would have continued the pattern of active governments interacting in various relationships to provide certain goods and services for the public. The Reagan Administration had a different set of intergovernmental goals, and the Office of Management and Budget was the primary tool used by the Administration to implement these goals.

30/ U.S. General Accounting Office. Perspectives on Intergovernmental Policy and Fiscal Relations; Report by the Comptroller General of the United States. GGD-79-62. Washington, 1979. p. 34.

31/ Shapek, Managing Federalism, p. 246, 247.

The basic elements of the Reagan intergovernmental agenda included:

1. A fundamental change in the role of the central government in the federal system, which would shrink in size, function authority, and influence in domestic matters.

2. Greater reliance on State government and on the private sector.

3. Reduced Federal regulation of state and local governments, reduced Federal preemption of state and local regulatory responsibilities and a stronger role for OMB in implementing a uniform executive branch approach to regulation.

4. Less spending by all levels of government.

Since the Federal budget and Federal regulatory policy have been principal vehicles for implementing this agenda, OMB has been at the heart of this Administration's intergovernmental strategies and programs. One commentary has noted that, under the Reagan Administration, ". . . the director of OMB suddenly became the principal political strategist and public advocate of the president's program in domestic affairs, a role without precedent in the history of the agency." 32/

It was David Stockman, Director of the Office of Management and Budget, who presented to the Congress, on the Administration's behalf, the President's Federalism Initiative, which he described in these words:

> The federalism plan reaches beyond the narrow questions of grant-in-aid reform that are important and that have been dealt with [by] this committee in the past and to the fundamental structure of our entire federalism. 33/

The Federalism Initiative, according to President Reagan, would realign the federal system in "a single stroke." 34/ It had two major components: a "swap" component affecting the Nation's three largest

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32/ Mosher, Federick C. and Max O. Stephenson, Jr. The Office of Management and Budget in a Changing Scene. Public Budgeting and Finance, V. 2, Winter 1982. p. 30.

33/ U.S. Congress. Senate. Committee on Governmental Affairs. President's Federalism Initiative. Hearing, 97th Congress, 2nd session. February and March 1982. Washington, U.S. Govt. Print. Off., 1982. p. 22

34/ U.S. President, 1981- (Reagan). The State of the Union; Address Delivered before a Joint Session of the Congress, January 26, 1982. Weekly Compilation of Presidential Documents, v. 18, February 1, 1982. p. 80.

means-tested transfer programs and a "turnback" component affecting approximately 45 categorical aid programs. The "swap" component called for the Federal Government to assume the full responsibility for the Medicaid program; concurrently, the States would take over full responsibility for the Aid to Families with Dependent Children and Food Stamp programs. The "turnback" component proposed a phased withdrawal of the Federal Government from approximately 45 programs in education, community development, transportation, and social services. A Federalism Trust Fund of $28 billion would have funded the "turnback" programs during the transition.

Throughout 1982, the Administration negotiated the details of the Initiative with State and local government representatives and other interested parties, but no agreement was reached and no legislation was sent to Congress. In 1983, the Administration proposed a revised Federalism Initiative that eliminated the "swap" concept and concentrated on consolidation of a number of existing grant programs into four "megablock" grants. Legislation to enact the block grants was introduced in the Senate, (98th Congress, S. 761, S. 762, S. 763, and S. 767), but no further action was taken.

At the same time that OMB assumed a highly visible role as an advocate and implementer of the Federalism Initiative and other elements of the Administration's intergovernmental agenda, it has, according to some observers, neglected or eliminated important procedural and institutional elements--the "narrow questions of grant-in-aid reform" mentioned by Director Stockman in the testimony cited above-of earlier intergovernmental reform efforts. This includes many of the procedures promulgated through the OMB management circulars identified above, and institutions such as the Federal Regional Councils and OMB's intergovernmental staff unit, both of which were abolished. What is not clear at this point is whether new intergovernmental trends have made the old agenda moot and outmoded or whether there is still validity to that agenda.

Little attention has been given by OMB to the feasibility of developing a new system for organizing, directing, controlling, and evaluating the Federal assistance system along lines sketched out in the report to the Congress mandated by the Federal Grant and Cooperative Agreement Act of 1977. 35/ Nor has any attention been given to investigating the possibilities of change embodied in the

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35/ U.S. Executive Office of the President. Office of Management and Budget. Managing Federal Assistance in the 1980's; Working Papers. Washington, 1980. 2 vol.

writings of observers such as Frederic Mosher 36/ and Lester Salamon. 37/ Mosher has suggested that the dominance of grants-in-aid as a Federal tool requires a "fundamental rethinking and reshaping of both federal management strategies and accountability systems." Salamon has recommended that analysts should look at the various forms of Federal incentive, delivery, and enforcement devices that have been developed since the 1960's to see which are the most effective and why. To a great extent, OMB's lack of attention to these matters results from different perceptions of the appropriate role of the Federal Government. The proposals mentioned above relate to a Federal Government that will continue to have a major role in domestic governance, and will continue to share activities with other levels of government. The Reagan Administration, and OMB as its agent, has been portrayed as aiming for a world in which the Federal Government would withdraw very substantially from domestic activities and each level of government would operate in its own sphere with little entanglement with the other levels. 38/

Some intergovernmental management activities that seem familiar to those cognizant of OMB activities in the past twenty years are in fact different, because the driving force behind them has changed. For example, during the late 1960's and early 1970's OMB was very active in standardizing and rationalizing the regional and field activities of the Federal agencies. The purpose of this effort was to improve accessibility and program delivery in an expanding Federal assistance system. Current proposals to realign and field structure emphasize that the intent is to ". . . achieve the most cost-effective delivery of major operating programs," and to "ensure that programs are delivered to the American people efficiently and at the least cost." 39/ Furthermore, they are operating with a different set of expectations and assumptions regarding the Federal system: "The

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36/ Mosher, Frederick C. The Changing Responsibilities and Tactics of the Federal Government. Public Administration Review, v. 40, November/December 1980. p. 541-548.

37/ Salamon, Lester M. and Michael S. Lund. The "Tools" Perspective on Government Action: Purpose, Promise and Tasks. (Discussion Paper) Washington, The Urban Institute, 1985. 25 p.

38/ Beam, New Federalism, Old Realities, p. 48. Peterson, Federalism and the States, p. 222.

39/ U.S. Executive Office of the President. Office of Management and Budget. Management of the United States Government; Fiscal Year 1986. Washington, U.S. Govt. Print. Off., 1985. p. 54.

Administration's Federalism policy has also greatly reduced the number of separate Federal assistance grant programs, and transferred more authority to State and local governments." 40/

OMB argues that the savings realized from improved efficiency "can improve the quality of program delivery to beneficiaries." 41/ However, one evaluation of the proposed changes suggests a less positive outcome:

> But what will be the impact of that administrative arrangement in terms of service to the public? Cost savings are clearly desired, but what about the impact on the public of how the government operates? What will be the impact on farmers of field office consolidation in the Department of Agriculture? Consolidation costs and benefits in the report are primarily considered in administrative and structural terms. Likewise, issues related to program management, rather than the administrative functions that support those programs, are almost entirely neglected in the management report. 42/

To a great extent, then, even the traditional OMB intergovernmental management activities have been redirected to emphasize new goals. Mosher and Stephenson comment that:

> Management has come to mean the elimination of 'fraud, waste, and abuse' (terms which have become roughly synonomous), thus the reduction of federal costs; and the transfer of programs and the costs thereof to the States. All of these activities are essentially negative as far as the federal government is concerned, and they are thus entirely consonant with the thrust of the Reagan budgetary aims in domestic affairs. 43/

At present, there is no organizational entity within OMB that is explicitly identified with intergovernmental relations, with the exception of a Senior Intergovernmental/Congressional Specialist in the Planning and Communications Management Division. In a March 1983 reorganization, the Intergovernmental Affairs Division, established in 1973, was abolished; its responsibilities now are located in the Financial Management Division, the Management Improvement Division, and the Planning and Communications Management Division.

40/ Ibid.

41/ Ibid, p. 53.

42/ Hansen, Michael G. Management Improvement Initiatives in the Reagan Administration; Round Two. Public Administration Review, v. 45, May/June 1985. p. 443.

43/ Mosher, Fredrick C., The Office of Management and Budget, p. 33.

According to OMB's fiscal year 1986 budget justification statement, the responsibilities for intergovernmental management are divided as follows:

1. Management Improvement Division: The Division develops and implements cost reduction efforts for administrative operations and develops, analyzes, and coordinates organizational proposals to improve the management of Federal programs. One current work item with major potential implications for intergovernmental management is the Division's plan to "streamline" the field structure.

2. Financial Management Division: This Division develops financial management, accounting, and grants management policies; monitors agency financial and grants management practices; and improves audit and audit follow-up systems. Fiscal year 1985-1986 workload activities include:

   Establishing and monitoring government-wide administrative practices and cost reimbursement principles for grants to State and local governments, universities, and nonprofit organizations.

   Providing staff support for the Block Grant Implementation Task Force in coordinating policy on block grants.

   Supporting efforts of the Office of Information and Regulatory Affairs to achieve major reductions in the regulatory burden placed on State and local governments.

   Developing policies, procedures, and guidelines to implement P.L. 98-502, the Single Audit Act of 1984.

   Streamlining government-wide administrative requirements for grants to State and local governments and other non-profit organizations (Circular A-102).

   Updating and clarifying guidance implementing Chapter 63 "Using Procurement Contracts, Grants and Cooperative Agreements" of P.L. 97-258.

3. Planning and Communications Management Division: This Division, among other things, develops OMB intergovernmental policy options and coordinates external activities in intergovernmental affairs. Workload activities in Fiscal year 1985 and 1986 included:

   Evaluate the implementation of the consultative process required by Executive Order 12372.

Continued efforts related to intergovernmental relations and management division support to Congressional and public affairs.

Improve the Federal Assistance Award Data System and the Consolidated Federal Funds Report. 44/

The most recent memorandum from the Associate Director for Management to the OMB Intergovernmental Network included the following items in its status report on OMB's intergovernmental activities: implementation of Executive Order 12372, revisions in cash management procedures related to grant-in-aid funds, implementation of the Single Audit Act of 1984, review of Circular A-102, and review of the Consolidated Federal Funds Report. 45/

At present, the most likely source of an OMB intergovernmental agenda is a Working Group on Federalism established by Attorney General Edwin Meese as a sub-unit of the Domestic Policy Council. The Working Group is chaired by the General Counsel of OMB, and staffing is provided by OMB. Some of the items considered by the Working Group are:

An immediate major initiative to complete the dismantling of about 25 major regulations identified as burdensome by State and local government groups.

Preparation of options for a major federalism initiative suitable for inclusion in the 1986 or 1987 State of the Union Message by the President.

Initiatives addressing discrete, major issues of federalism, such as the impact of the Supreme Court's decision in the case of Garcia V. SAMTA.

Completion of changes to government-wide grants management policy (Circular A-102).

Preparation of a legislative proposal to simplify crosscutting statutes affecting Federal aid programs.

44/ U.S. Congress. House. Committee on Appropriations. Subcommittee on the Treasury, Postal Service, and General Government. Hearing, 99th Congress, 1st sess. Washington, U.S. Govt. Print. Off., 1985. p. 664-667.

45/ U.S. Executive Office of the President. Office of Management and Budget. Associate Director for Management. Update on OMB Intergovernmental Activities; Memorandum for the OMB Intergovernmental Network. Washington, January 27, 1986. Various pagings.

A memorandum from the Attorney General says that the Working Group's role will be to develop "a basic Administration-wide rhetorical strategy for rooting basic constitutional Federalism principles in Federal law and regulations. The strategy will depend as much on restoring fundamental principles and maintaining theoretical consistency as on creating new policies." 46/ This will continue the Reagan Administration's practice of working to attain fundamental changes in the intergovernmental system, with OMB as the "point man." 47/

46/ Reagan Administration Federalism Group Slates Deregulation, Grants Management. Federal Grants Management Handbook; Current Developments, Issue No. 85-10, October 1985. p. 6.

47/ Kirschten, Dick. Conservatives Find a White House Base. . . In Meese's Federalism Work Group. National Journal, v. 17, Sept. 28, 1985. p. 2208-2209.

SO/jcd

APPENDIX I

OFFICE OF MANAGEMENT AND BUDGET:
A SELECTED ANNOTATED BIBLIOGRAPHY

George H. Walser*

This bibliography's principal focus is the Office of Management and Budget: its history, evolution, organization, and functions. Particular attention is given to its origins in the Bureau of the Budget, its broad management and budgeting responsibilities, and its duties regarding statistical policy, paperwork control and information resources, intergovmental relations, government procurement, government organization, legislative clearance, government regulation, financial management, and workforce management.

Most of the citations are annotated and have been chosen from the computerized bibliographic data base created and maintained by the Library Services Division of the Congressional Research Service. A number of citations were selected from the computerized catalog to the collections of the Library of Congress.

Bureau of the Budget

Brundage, Percival Flack. The Bureau of the Budget. New York, Praeger, 1970. 327 p. (Praeger library of U.S. Government departments and agencies)

President Eisenhower's budget director sets forth the history, organization, and duties of the Bureau.

Marx, Fritz Morstein. The Bureau of the Budget: its evolution and present role. American political science review, v. 39, Aug. 1945: 653-684; Oct.: 869-898.

Presents the Bureau's "historic evolution, placing special emphasis on the broader concepts which furnished the foundation for the Budget and Accounting Act [of 1921] and on the institutional design of the Bureau in its formative period. . . . The second part aims to give some account of the Bureau's current responsibilities and activities, including its working relationships with Congress and the various agencies."

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*Senior bibliographer, Government and Law, Library Services Division, Congressional Research Service. The author would like to thank Morton Rosenberg, Legislative Attorney, American Law Division, Charles H. Levine, Senior Specialist in American National Government and Public Administration, and Jeanne E. Griffith, Virginia McMurtry, and Ronald C. Moe, Specialists in American National Government, Government Divsion, and Richard Gigax, Head of the Subject Specialization Section, Library Services Division, for their review of this work and their comments. The author would also like to thank Ann Eschete for the secretarial production of this bibliography.

Schick, Allen. The Budget Bureau that was: thoughts on the rise, decline, and future of a Presidential agency. Law and contemporary problems, v. 35, summer 1970: 519-539.

"Article discusses the inadequacies which led to the decease of the Bureau, once the premier institution in the President's Office."

U.S. Commission on Organization of the Executive Branch of the Government (1947-1949). Office of the Budget. In its The Hoover Commission report on organization of the executive branch of the Government. New York, McGraw-Hill, 1949. p. 42-48.

"The Office of the Budget can be the greatest instrumentality of the President for achieving continuous results in improved administrative efficiency," the Hoover Commission concluded.

U.S. President's Committee on Administrative Management. Report, with studies of administrative management in the Federal Government. Submitted to the President and the Congress in accordance with Public Law no. 739, 74th Congress, 2nd session. Washington, G.P.O., 1937. 382 p.

Report of the Brownlow Committee that led to the establishment of the Bureau of the Budget as an agency of the Executive Office of the President.

OMB: Creation and Evolution

Berman, Larry. Office of Management and Budget (OMB). In Government agencies. Donald R. Whitnah, editor-in-chief. Westport, Conn., Greenwood Press, 1983. (Greenwood encyclopedia of American institutions, 7) p. 407-412.

Outlines the history and functions of OMB. "OMB is the most highly developed administrative coordinating and program unit in the executive office and provides the central institutional mechanism for imprinting (some would say, inflicting) presidential will over the government."

----- The Office of Management and Budget and the Presidency, 1921-1979. Princeton, N.J., Princeton University Press, c1979. 180 p.

This history of OMB "contends that although OMB's effectiveness depends upon its responsiveness to presidential needs, these needs must be for a neutral institutional conscience within the Executive Office and not for a partisan instrument for managing executive branch policies."

----- The Office of Management and Budget that almost wasn't. Political science quarterly, v. 92, summer 1977: 281-303.

"Discusses the efforts of three presidentially appointed advisory groups in trying to improve management practices within the executive branch . . . . Contends that in all these efforts, the Bureau of the Budget obstructed proposed changes in the Executive Office of the President because it wished to preserve its post-1939 status as first among equals."

----- OMB and the hazards of Presidential staff work. Public administration review, v. 38, Nov.-Dec. 1978: 520-524.
"This article assesses the dilemmas (especially perceptions of politicization) confronting the Office of Management and Budget (OMB) as an institutional staff unit that serves both the immediate political needs of an incumbent president and the long-range needs of the presidency."

Blumenthal, Sidney. David Stockman: the President's cutting edge. New York times magazine, Mar. 15, 1981: 23-25, 80-82, 84, 90, 91-92, 94.
Profiles David Stockman, director of OMB, and discusses his role in the President's budget policy.

Clark, Timothy B. OMB: now at center stage. National journal, v. 13, Apr. 25, 1981: 690-693.
Examines the role, function, and key staff members of OMB in the Reagan Administration.

Covington, Cary R. Development of organizational memory in Presidential agencies. Administration & society, v. 17, Aug. 1985: 171-196.
Presents a model of organizational memory and, using staff interviews, applies it to OMB, the National Security Council, and the Council on Environmental Quality, which, as part of the Executive Office of the President, tend to be disrupted by Presidential transitions. Of the three agencies "OMB receives the most extrapresidential pressures and the fewest presidential demands, and its organizational features help memory to develop. . . . Hence OMB has the most extensive memory, strongest learning capability, and clearest identity."

Demac, Donna A. The OMB: making government safe for business. Business and society review, no. 53, spring 1985: 29-32.
Maintains that OMB "has steadily solidified its control over agency policies, combining its unprecedented regulatory powers and budget authority to promote the Reagan Administration's crusade to roll back government intervention in the economy. The result of OMB's new clout has been a steep reduction in federal resources devoted to social programs and a government apparatus fundamentally reoriented toward business interests."

Havemann, Joel. OMB's new faces retain power, structure under Ford. National journal reports, v. 7, July 26, 1975: 1071-1077.
Reviews the role of OMB in the Ford administration.

Heclo, Hugh. OMB and the Presidency--the problem of "neutral competence." Public interest, no. 38, winter 1975: 80-98.
"OMB has gained too much political power and lost too much of the governmental authority that stems from neutral competence."

The Institutionalized Presidency. In Thomas P. O'Neill, Jr. Symposium on American Politics (2nd : 1983 : Boston College). Modern Presidents and the Presidency: proceedings. Edited by Marc Landy. Lexington, Mass., Lexington Books, c1985. p. 49-91.
Contents.--On the separation of brain and state: implications for the Presidency, by T. Cronin.--The Executive Office of the President, by H. Heclo.--Comments, by K. Ferguson.--Comments, by B. Frank.

McIntyre, James T., Jr. The importance of the Office of Management and Budget. In Effective Washington representation. Edited by Stanley J. Marcuss. [New York] Law & Business [1983] p. 135-166.

Former OMB director discusses the art of lobbying that agency by attorneys, reviewing its roles and looking at points of access. "It will always be an essential contact point for someone trying to affect federal policy. If others in the White House carry their own weight, OMB may not be the only place to lobby inside the Executive Office of the President, but it will always be one necessary stop."

Mosher, Frederick C. A tale of two agencies: a comparative analysis of the General Accounting Office and the Office of Management and Budget. Baton Rouge, Louisiana State University Press, c1984. 219 p. (Miller Center series on the American Presidency)

Examines OMB's and GAO's "common origins, the influences that affected their development, their similarities and differences, their problems and failings, and particularly their significance in the American system of government."

----- The Office of Management and Budget in a changing scene, by Frederick C. Mosher and Max O. Stephenson, Jr. Public budgeting & finance, v. 2, winter 1982: 23-41.

"A principal tool of the president in giving effect to his program has been the Office of Management and Budget (OMB). . . . How has the Reagan program affected the institution and the performance of the OMB? And, what will be the likely impact of that effort upon OMB in the future?"

Olson, Dolores. Presidential reorganization. Presidential studies quarterly, v. 11, fall 1981: 526-544.

Considers past efforts to reorganize Presidential staff and support agencies and recommends that a major study be made of "the characteristics of leadership most desired in public administrators, the President specifically, and . . . the organizational changes which might be conducive to more effective administration."

Rauch, Jonathan. Reagan's traffic cop. National journal, v. 17, May 18, 1985: 1093-1095, 1098-1099.

Examines the outlook for the Office of Management and Budget, headed by David Stockman, during Reagan's second term. "Budget cutting, the name of the political game in Washington, is OMB's specialty. And it has been Stockman's own specialty." Includes a biographical directory of key agency officials.

----- Stockman's quiet revolution at OMB may leave indelible mark on agency. National journal, v. 17, May 25, 1985: 1212-1217.

"Many say the next director will inherit the higher expectations for the job that Stockman has created. That may be one of Stockman's most important legacies."

Samuelson, Robert J. The people everyone loves to hate. Washingtonian, v. 11, Nov. 1975: 62, 64-66, 68-70, 72-74, 76-78, 80-81.

Discusses OMB's role in government administration.

Special report: Congress and OMB. Congressional Quarterly weekly report, v. 43, Sept. 14, 1985: 1809-1818.

Offers four separate articles, including an assessment of the "generally adversarial roles" of Congress and OMB in budget drafting, a look at how OMB controls agencies' legislative proposals, a look at how it controls their regulatory activities, and a profile of OMB director-designate James C. Miller.

Tomkin, Shelley Lynne. Playing politics in OMB: civil servants join the game. Presidential studies quarterly, v. 15, winter 1985: 158-170.

"The verdict whether institutional politicization among OMB careerists increased during the 1970's appears to be mixed. Certain of the 'politicization indicators' described in this article (interest group contacts, congressional monitorship, quasi-political analysis), while probably increasing over the last ten years, appear to some degree to have existed before the 1970 reorganization. Other areas, such as careerist-congressional contacts exhibit more marked increases, particularly of late."

U.S. Congress. House. Committee on Government Operations. Legislation and Military Operations Subcommittee. Confirmation of the director and deputy director of the Office of Management and Budget. Hearings, 93d Congress, 1st session, on S. 518 and H.R. 3932. Mar. 5 and 9, 1973. Washington, G.P.O., 1973. 185 p.

"Bills to provide that appointments to the offices of director and deputy director of the Office of Management and Budget shall be subject to confirmation by the Senate, and for other purposes."

U.S. Congress. House. Committee on Government Operations. Legislation and and National Security Subcommittee. Reorganization Plan No. 1 of 1977 (Executive Office of the President). Hearings, 95th Congress, 1st session. Aug. 3 and Sept. 8, 1977. Washington, G.P.O., 1977. 221 p.

Wyszomirski, Margaret Jane. The de-institutionalization of Presidential staff agencies. Public administration review, v. 42, Sept.-Oct. 1982: 448-458.

"Article is concerned with the different and variable administrative life patterns of presidential staff agencies. Specifically, it is a study of how four agencies of the Executive Office of the President (EOP) have persisted since their creation--always surviving, frequently coping, occasionally developing, and eventually becoming institutionalized."

Management

Forum: management reform: high stakes or trivial pursuit? Bureaucrat, v. 13, winter 1984-1985: 7-41.

Contents.--A new doctrine of reform, by H. Champion.--Sustaining management reform, by A. Dean.--To be or not to be, by C. Bingman.--Manager's role in public management, by L. Lynn, Jr.--Building effective public management, by C. Bowsher.--A new Hoover Commission? by R. Moe.--Something for everybody: budget reform, by J. Young.--New program evaluation tools, by B. Mitchell & M. Hendricks.

Haider, Donald. Presidential management initiatives: a Ford legacy to executive management improvement. Public administration review, v. 39, May-June 1979: 248-259.

Describes the Presidential Management Initiatives (PMI) program instituted by President Ford in July 1976 and terminated by Carter six weeks into his term. "This seven month experiment marked the shortest half-life of any major presidential management reform in recent memory."

Havemann, Joel. MBO nears second phase, linking goals to budget process. National journal reports, v. 6, Apr. 27, 1974: 609-615, 617-618.

"The OMB is getting ready to take the second step in its new system for identifying and achieving Presidential goals--linking the system to the 1976 budget process. After a year of working with management by objective, all but one of 21 agencies--have identified their Presidential goals, and 18 agencies have created systematic ways of checking progress toward the goals."

----- OMB begins major program to identify and attain Presidential goals. National journal, v. 5, June 2, 1973: 783-793.

"Using a strengthened and reorganized Office of Management and Budget as his chief tool, President Nixon has ordered 21 agencies, including the 11 Cabinet departments, to adopt new management techniques that meld operations with goals."

----- OMB's "management-by-objective" produces goals of uneven quality. National journal reports, v. 5, Aug. 18, 1973: 1201-1210.

"An analysis by National Journal of objectives for energy and natural resources--and the bureaucratic exercise of 'management by objective' (MBO) that produced them--shows that MBO is not going to change direction of the federal government."

Herbers, John. The other Presidency. New York times magazine, Mar. 3, 1974: 16-17, 30, 32, 34, 36, 38, 41.

Reveals that because the Nixon administration has been so shaken by Watergate, OMB has become deeply involved in some day-to-day operations of the Government. "During the collapse, it has played a stronger role than usual . . . . In many respects it has become a surrogate President, administering the Nixon policies as its top officials see them."

The Illusion of Presidential government. Edited by Hugh Heclo and Lester M. Salamon. Bolder, Colo., Westview Press, Published in cooperation with the National Academy of Public Administration, c1981. 359 p.

"Most of the chapters in this volume were originally prepared during the spring and summer of 1980 for use by a panel on presidential management convened by the National Academy of Public Administration."

Kantor, Seth. Cleaning up the Federal management mess: White House plan to save billions. Nation's business, v. 71, Feb. 1983: 32-34.

Profiles OMB deputy director Joseph Wright, "chief draftsman of Reform '88, an ambitious six-year plan to streamline government management techniques so that billions of dollars in waste will be eliminated."

Malek, Frederic V. Washington's hidden tragedy: the failure to make government work. New York, Free Press, c1978. 292 p.

Deputy director of OMB in the Nixon administration draws on his five and a half years of government service to identify three major problems: "1. The inadequate preparation of top government officials for managerial responsibilities; 2. The subordination, once in office, of considerations of substance to political needs; 3. The lack of a readily identifiable 'system of management' within the government."

Management by objectives in the Federal Government. Bureaucrat, v. 2, winter 1974: 351-426.

Symposium surveys concepts and practices of "MBO" in articles by Chester Newland, Robert Wallace, Ellsworth Morse, Robert March and Thomas McFee, Joseph DeSio and John Higgins, Ralph Bledsoe, and David Brown.

Management of the United States Government: fiscal year 1986. Washington, Executive Office of the President, Office of Management and Budget, 1985. 106 p.

Contents.--The President's management improvement program: Reform '88.--The congressional role: legislative imperatives.--Appendix A. Management improvements and savings targeted by Congress.--Appendix B. Status report on the recommendations of the President's Private Sector Survey on Cost Control.

Moe, Terry M. The politicized Presidency. In The New direction in American politics. John E. Chubb and Paul E. Peterson, editors. Washington, Brookings Institution, c1985. p. 235-271.

Finds that the Reagan administration, more than any other modern Presidency, has moved to assert control of the executive branch, using "the politicization of administrative arrangements and the centralization of policy-related concerns in the White House. . . . The actors in the executive policy process--the cabinet, the bureaucracy, the OMB--have been integrated and coordinated from the top, and an array of problems and issues potentially dealt with in other administrative arenas has been drawn into the White House for centralized evaluation, reconcilliation, and action."

Newland, Chester A. Executive Office policy apparatus: enforcing the Reagan agenda. In The Reagan Presidency and the governing of America. Edited by Lester M. Salamon and Michael S. Lund. Washington, Urban Institute Press, 1984. (Changing domestic priorities series) p. 135-180.

Examines the domestic policy apparatus of the Executive Office of the President in the Reagan Administration, focusing on the chief Presidential aides in the White House Office, the newly created Office of Planning and Evaluation, the Office of Policy Development and its seven Cabinet Councils, and the three nonbudgeting policy roles of the OMB. Includes comments by Ben Heineman (p. 169-175) and Stephen Wayne (p. 176-180).

A Presidency for the 1980s; a report on Presidential management by a panel of the National Academy of Public Administration. Washington, The Academy, 1980. 49 p.

Includes recommendations to strengthen OMB's roles in the budget process, administrative management, program evaluation, intergovernmental assistance, and regulatory decision making.

The President and executive management: summary of a symposium. [Washington] National Academy of Public Administration, 1976. 61 p.

Discussion includes the President's relationship with executive branch agencies; staff support for the President; management resources available to the President from OMB, the Civil Service Commission, and the General Services Administration; and the effect executive reorganization proposals have on the function of executive departments.

President's Private Sector Survey on Cost Control (U.S.) Report on Federal management systems. Approved by the Subcommittee for the full Executive Committee, spring-fall 1983. Washington, For sale by the Supt. of Docs., G.P.O., 1984. 181 p.

Grace Commission task force report discusses executive branch information systems, financial management and audit, capital budgeting, and improvement of Federal evaluation.

Progress to date on Reform '88. Government executive, v. 17, Jan. 1985: 8-9, 12-13.

"Reagan's Federal management improvement program, titled 'Reform '88,' has been little noted outside Federal Government, itself. Yet, as the proposed White House budget for fiscal 1986 is now making evident, payoffs are beginning to show up in several of the approximately 20 separate projects that make up the total program."

Revitalizing Federal management: managers and their overburdened systems; a report by a panel of the National Academy of Public Administration. Washington, The Academy, 1983. 68 p.

"Sponsored by a consortium of sixteen Federal agencies under DOT contract."

Recommends creation of an Office of Federal Management to take over OMB's management functions.

Rose, Richard. Implementation and evaporation: the record of MBO. Public administration review, v. 37, Jan.-Feb. 1977: 64-71.

Review of management by objectives in the Federal Government, initiated by OMB in 1973, concludes that "MBO has evaporated, becoming a part of the climate of management, albeit a part whose specific influence is limited and incapable of precise measurement."

----- Managing Presidential objectives. New York, Free Press, c1976. 180 p.

Examines the effect of using management by objectives in the Federal Government.

Salasin, Susan, and Laurence Kivens. Fostering Federal program evaluation: a current OMB initiative. Evaluation, v. 2, no. 2, 1975: 37-41.

Concludes that although the Evaluation and Program Implementation Division of OMB is relatively new "it has achieved some success in formalizing an executive branch attitude toward agency program evaluation, and in utilizing existing legislative language."

Strengthening OMB's role in improving the management of the Federal Government. [Washington] National Academy of Public Administration, 1981. [8] p.

Identifies "nine areas of management requiring high priority in OMB and full support by the President."

Symposium: managing the Reagan Revolution: less government--better governance? Bureaucrat, v. 11, spring 1982: 12-33.

In remarks at a Dec. 1981 American Society of Public Administration Conference, OMB deputy director Edwin Harper outlines plans for reducing government's size and scope and making it more efficient; a panel of experts, including Harper and OPM director Donald Devine, discuss the role of career administrators; and comptroller general Charles Bowsher overviews GAO's role in encouraging management improvement.

U.S. Congress. Senate. Committee on Government Affairs. Oversight of the implementation of the Grace Commission report. Hearing, 99th Congress, 1st session. May 9, 1985. Washington, G.P.O., 1985. 273 p. (Hearing, Senate, 99th Congress, 1st session, S. Hrg. 99-159)

Includes testimony and exhibits from OMB deputy director Joseph Wright on Reagan administration efforts to carry out Grace Commission recommendations.

Wright, Joseph B. Joe Wright on Reform '88. Bureaucrat, v. 12, summer 1983: 7-11.

OMB deputy director is interviewed about the Reagan administration's set of management reform initiatives known as Reform '88. He describes the second phase: "fundamental changes in four broad areas across government: financial management systems; the budget process; resources management; and a management information system that ties it all together."

Budget

Bromiley, Philip, and John P. Crecine. Budget development in OMB: aggregate influences of the problem and information environment. Journal of politics, v. 42, Nov. 1980: 1031-1064.

Uses a mathematical model to explore "the implications of two kinds of information routinely generated by OMB--agency-specific information and aggregate economic or fiscal policy information--for the repeated adjustments OMB makes to a succession of tentative budgets. These tentative Trial Budgets converge at the end of the year to make the President's annual budget."

Brundage, Percival Flack. The Federal budget: recent trends and future opportunities. Price Waterhouse review, v. 15, autumn 1970: 6-21.

Former Bureau of the Budget director makes some pertinent observations about the difficult national problems OMB is currently dealing with--and those it will have to deal with in the years ahead.

Collender, Stanley E. The guide to the Federal budget: fiscal 1986 edition. Washington, Urban Institute Press, c1985. 156 p.

Crecine, J. P., M. S. Kamlet, D. C. Mowery, and M. Winer. The role of the U.S. Office of Management and Budget in executive branch budgetary decision making. In Research in public policy analysis and management: policy and applied research. v. 2. Editor, John P. Crecine. Greenwich, Conn., JAI Press, 1981. p. 327-357.

"OMB exerts a major influence upon the allocation of federal resources in the annual President's budget. Differences within the

Executive Branch between the agencies and OMB are substantial; in most cases they are significantly larger than the changes wrought in the President's Budget by Congress. In the resolution of these differences, the influence of OMB is dominant."

Cutter, W. Bowman. The Presidency and economic policy: a tale of two budgets. In The Presidency and the political system. Michael Nelson, editor. Washington, Congressional Quarterly Press, c1984. p. 471-493.

"Examines the general characteristics of the federal budget process, Carter's and Reagan's individual efforts to cope with the problems of budget making [in fiscal years 1980 and 1981, respectively], and finally the skills future presidents will need to meet the challenge of budget management."

Federal budget policy in the 1980's. Edited by Gregory B. Mills and John L. Palmer. Washington, Urban Institute Press, c1984. 468 p. (Changing domestic priorities series)

Contents.--The context for budget choices.--Spending and tax policies.--The political and institutional environment.

Greider, William. The education of David Stockman. Atlantic monthly, v. 248, Dec. 1981: 27-30, 32-40, 43-47, 50-54.

Based on conversations over eight months with OMB director David Stockman, examines Stockman's efforts to cut the Federal budget and describes his views regarding the skirmishing at the White House and on Capitol Hill over the budget and tax cuts.

Johnson, Bruce E. From analyst to negotiator: the OMB's new role. Journal of policy analysis and management, v. 3, summer 1984: 501-515.

"Dramatic changes in the executive and legislative budget processes over the last ten years have elevated the Office of Management and Budget (OMB) to a new position of power and importance. Within the executive branch the budget process has become more highly centralized in the president's office; and within the Congress a similar centralization has occurred. In both branches the OMB has become the key institution for coordinating the actions of the budget-making powers."

Kamlet, Mark S., and David C. Mowery. The budgetary base in Federal resource allocation. American journal of political science, v. 24, Nov. 1980: 804-821.

"This paper examines the role of the budgetary base in the executive branch's federal budgetary process, focusing on the Office of Management and Budget (OMB). The analysis calls into question a number of standard assumptions in the theory of governmental budgetary decision-making. These include the definition of the base, its immutability over the planning cycle, the functions that it serves, and the extent to which it, as opposed to the increment, is the focus of attention of budgetary actors."

McOmber, Dale. A public accounting: an OMB restrospective. Public budgeting & finance, v. 1, spring 1981: 78-84.

OMB's assistant director for budget review reflects on his "extraordinary opportunity to sit at one end of a large table and watch the most facinating series of meetings in government--the annual director's review of the budget."

Mathiasen, David G. Recent developments in the composition and the formulation of the United States Federal budget. Public budgeting & finance, v. 3, autumn 1983: 103-115.
Discusses how "both the process and the resulting resource allocation have undergone significant changes since a new administration took office in January of 1981 with a major emphasis on restraining the growth in nondefense outlays. This change in policy has coincided with significantly different ways of formulating budget proposals and budget legislation."

Schick, Allen. The budget as an instrument of Presidential policy. In The Reagan Presidency and the governing of America. Edited by Lester M. Salamon and Michael S. Lund. Washington, Urban Institute Press, 1984. (Changing domestic priorities series) p. 91-134.
"The Reagan administration has contributed to the evolution of budgeting in a manner consistent with patterns that began to emerge before Reagan's inauguration: . . . centralized budgeting, a more active presidential role in the legislative process, multiyear budgeting, and a more comprehensive resource allocation process." Includes comments by James Verdier (p. 126-130) and Robert Reischauer (p. 131-134).

----- The President's budget problem. Public budgeting & finance, v. 1, winter 1981: 56-67.
Surveys the development of the budget process and the role of the Bureau of the Budget and the Office of Management and Budget. Examines President Reagan's efforts to make the budget an instrument of his policies.

Shull, Steven A. Budgetary policy-making: Congress and the President compared. Presidential studies quarterly, v. 9, spring 1979: 180-191.
"This research assesses, through descriptive statistics and correlation coefficients, presidential and congressional support toward eight federal executive branch agencies and presidential and congressional support for each other (interaction) from fiscal years 1960 to 1971." The agencies are the Agency for International Development, Corps of Engineers, Atomic Energy Commission, Federal Aviation Administration, National Aeronautics and Space Administration, Veterans Administration, Office of Education, and Commodity Credit Corporation.

Shuman, Howard E. Politics and the budget: the struggle between the President and the Congress. Englewood Cliffs, N.J., Prentice-Hall, c1984. 340 p.
Partial contents.--The President's budget: the country's number one political and priorities document.--The President proposes: the politics of the budget in the executive branch.--The Reagan budget revolution.

Szanton, Peter L. OMB's Defense cop-out. Foreign policy, no. 58, spring 1985: 99-114.
OMB associate director in the Carter administration charges that "OMB imposes far less discipline on the DOD budget, and thus on national security decision making, than it does on domestic budgets and decision making. . . . The shortcomings in defense planning, budgeting, procurement, and operations that OMB's placid performance leaves essentially unchallenged are serious."

Tomkin, Shelley Lynne. OMB budget examiners' influence. Bureaucrat, v. 12, fall 1983: 43-47.

"This article investigates how and to what degree OMB budget examiners during the mid-1970s were able to influence OMB decisions and how they appear to have lost some of their former institutional influence."

White, Joseph. Much ado about everything: making sense of Federal budgeting. Public administration review, v. 45, Sept.-Oct. 1985: 623-630.

Review article "examines publications which present the varied definitions of budgeting which have evolved as concerns have shifted from technical to political processes. It assess how these meanings may be integrated while preserving a distinctive focus grounded in traditional concerns of public administration."

Wildavsky, Aaron. The politics of the budgetary process. 4th ed. Boston, Little, Brown, 1984. 323 p.

First published in 1964, this work describes the process by which the Federal budget originates and develops.

Statistical Policy

Alexander, Lois. There ought to be a law. . . Review of public data use, v. 12, Dec. 1984: 279-287.

"Considers the issues of statistical use of information collected by the federal government, especially the administrative records that agencies maintain in order to carry out their programs. . . A focal point for the paper is the draft bill for Confidentiality of Federal Statistical Records recently circulated by the Office of Management and Budget."

Baseline Data Corporation. The Federal statistical system, 1980 to 1985; a report prepared for the Congressional Research Service of the Library of Congress. Washington, G.P.O., 1984. 284 p.

At head of title: 98th Congress, 2d session. House of Representatives. [Government Operations] Committee print.

This report "addresses recent trends in budgets, personnel resources, and politics in Federal agencies actually responsible for the collection and analysis of statistical information as well as the statistical policy coordination activities of the Office of Management and Budget."

Bonnen, James T. Federal statistical coordination today: a disaster or a disgrace? American statistician, v. 37, Aug. 1983: 179-202.

Argues that "Federal statistical coordination is dead. After four decades of episodic but declining support, the Office of Management and Budget has dismantled its limited capacity for statistical policy and coordination." Appends comments by S. E. Fienberg and C. Stater.

Demac, Donna A. Don't take those numbers away! Cutbacks in Federal statistics. In her Keeping America uninformed: government secrecy in the 1980's. New York, Pilgrim Press, c1984. p. 115-129.

Attorney criticizes OMB for its role in reducing Federal statistical operations during the Reagan administration. "In a short period of time, the combination of budget cuts, imposition of ceilings for collecting information, departmental reorganization, and staff reductions threatened to destroy large elements of the federal data base."

Duncan, Joseph W., and William C. Shelton. Revolution in United States Government statistics, 1926-1976. [Washington] U.S. Office of Federal Statistical Policy and Standards [For sale by the Supt. of Docs., G.P.O.] 1978. 257 p.

Reviews the history of Federal statistical programs and Federal statistical policy from 1926 until 1976. The authors focus on major breakthroughs in statistical theory and their applications in Federal programs.

Eckler, A. Ross. Some comments on "Federal Statistics" (Report of the President's Commission on Federal Statistics--volume 1). American statistician, v. 26, Apr. 1972: 11-14.

"This paper is an expansion of a discussion presented at the Philadelphia meetings of AAAS at the Sheraton Hotel on December 28, 1971. It is limited to volume 1 of the Commission Report."

O'Neill, Paul. OMB's role in planning and coordination of Federal statistics. Statistical reporter, no. 76-11, May 1976: 205-209.

OMB's deputy director outlines his agency's responsibilities.

Pearson, Robert W. The changing fortunes of the U.S. statistical system, 1980-1985. Review of public data use, v. 12, Dec. 1984: 245-269.

Summarizes the findings of the Congressional Research Service report, The Federal Statistical System, 1980 to 1985, and the General Accounting Office study, Status of the Statistical Community After Sustaining Budget Reductions, and concludes with objections to their "relatively benign conclusions."

President's Reorganization Project for the Federal Statistical System (U.S.) Improving the Federal statistical system: issues and options. Statistical reporter, no. 81-5, Feb. 1981: 133-221.

Presents the final reports of the projects, which review the need for oversight and coordination of statistical programs and present options for strengthening them.

Rowe, Judith S., and Susan Anderson. Keeping up with Federal statistics. Behavioral & social sciences librarian, v. 3, winter 1983: 11-18.

"After years of gradual erosion, the federal government's commitment to statistical coordination appears to have been at least temporarily abandoned. The Office of [Federal] Statistical Policy and Standards has been disbanded. Its remaining staff have been placed within the Office of Management and Budget's Office of Information and Regulatory Affairs. Users of federal statistics have to rely on a wide variety of sources to monitor developments."

U.S. Congress. House. Committee on Government Operations. Legislation and National Security Subcommittee. Federal Government statistics and statistical policy. Hearing, 97th Congress, 2nd session. June 3, 1982. Washington, G.P.O., 1983. 405 p.

Hearing focuses on the provisions of the Paperwork Reduction Act that relate to the coordination of statistical policy.

U.S. General Accounting Office. Status of the statistical community after sustaining budget reductions; study by the staff. July 18, 1984. Washington, G.A.O., 1984. 61 p.

"GAO/IMTEC-84-17"

"The federal statistical agencies, like other activities of the federal government, were subjected to budget cutbacks in the early 1980's. . . . This study focuses on the effects of the budget cutbacks and other difficulties faced by the federal statistical community."

Paperwork Control and Information Resources

Demac, Donna A. The budget and beyond: the Office of Management and Budget. In her Keeping America uninformed: government secrecy in the 1980's. New York, Pilgrim Press, c1984. p. 35-52.

Attorney criticizes OMB's role in shaping information policy in the Reagan administration. "Through curtailing, transferring, and redirecting the flow of information among government bodies and between the public and private sector, the OMB, under Reagan, was in a position to alter dramatically the rules and conditions for influencing government activity."

The Federal ADP procurement maze. Government executive, v. 9, Apr. 1977: 49-50, 52, 54-55.

Describes the confusing and overlapping rules and guidelines applied to the procurement of computer services by the United States Government.

Florance, Valerie. Presidential policy and information dissemination: an analysis of the Reagan moratorium on government publishing. Government information quarterly, v. 1, no. 3, 1984: 273-284.

Evaluates the effectiveness of the 1981 moratorium on the production and procurement of new Government publications, an action whose implementation is overseen by OMB. As a case study, an examination of the quantity, format, and content of Health and Human Services publications distributed to depository libraries during the freeze shows "(1) no significant reduction in the number of documents produced, (2) a shift toward smaller, less costly print for formats, and (3) no significant reduction in the release of publicity/advertising materials." These results "were not those expected given the presidential guidelines."

A Five-year plan for meeting the automatic data processing and telecommunications needs of the Federal Government. [Washington] U.S. Office of Management and Budget, U.S. General Services Administration, U.S. Dept. of Commerce, For sale by the Supt. of Docs., G.P.O. [1984] 2 v.

V. 1. Planning strategies--V. 2. Major information technology systems acquisition plans of Federal executive agencies, 1984-1989.

Information collection budget of the United States Government: fiscal year 1985. Washington, Executive Office of the President, Office of Management and Budget, 1985. 97 p.

"The Information Collection Budget (ICB) for FY 1985 is the Federal government's fifth 'paperwork budget' and the fourth to be prepared on a comprehensive government-wide basis under the Paperwork Reduction Act."

Neustadt, Richard M. Taming the paperwork tiger: an experiment in regulatory management. Regulation, v. 5, Jan.-Feb. 1981: 28-32.

Associate director of the White House Domestic Policy Staff reviews the Carter administration's program to reduce the Federal paperwork burden on the private sector and on State and local governments.

O'Reilly, James T. Who's on first?: the role of the Office of Management and Budget in Federal information policy. Journal of legislation, v. 10, winter 1983: 95-134.

"The current federal policy on the disclosure of federal information about non-federal persons' activities is no policy at all. There is no consistent policy to be analyzed, studied, or investigated."

The Paperwork Reduction Act of 1980: a section-by-section analysis of Public Law 96-511. Statistical reporter, no. 81-4, Jan. 1981: 112-118.

Includes discussion of "the responsibility and functions of the Office of Management and Budget for information activities of the Federal Government."

Reducing Federal paperwork, 1980-1983: a report to Congress under the Paperwork Reduction Act of 1980. Washington, Executive Office of the President, Office of Management and Budget, 1984. 17 p.

Schiller, Herbert I. Information--a shrinking resource. Nation, v. 241, Dec. 28, 1985-Jan. 4, 1986: 708-710.

Sees an effort by the Reagan administration to privatize information traditionally managed by the government. "O.M.B. is spearheading the effort to reduce the government's traditional responsibility to collect, compile and disseminate information . . . . Meanwhile, private companies are demanding, with the encouragement of the O.M.B., the right to acquire, organize and disseminate what they regard as the most profitable items in the national data stockpile."

Sprehe, J. Timothy. Developing a Federal policy on electronic collection and dissemination of information. Government publications review, v. 11, Sept.-Oct. 1984: 353-362.

Senior statistician in the Information Policy Branch of OMB's Office of Information and Regulatory Affairs describes the project he directs to develop a policy circular for the electronic management of information.

U.S. Commission on Federal Paperwork. The reports clearance process: a report. Washington [For sale by the Supt. of Docs., G.P.O.] 1977. 59 p.

"The Commission found that the central clearance function alone cannot be expected to control the heavy Federal paperwork burden. Its authority does not cover much of Federal paperwork."

U.S. Congress. House. Committee on Government Operations. Who cares about privacy? Oversight of the Privacy Act of 1974 by the Office of Management and Budget and by the Congress; eighth report together with separate views. Washington, G.P.O., 1983. 58 p. (Report, House, 98th Congress, 1st session, no. 98-455)

"This report reviews the record of OMB Privacy Act oversight."

U.S. Congress. House. Committee on Government Operations. Employment and Housing Subcommittee. OMB's proposed restrictions on information gathering and dissemination by agencies. Hearing, 99th Congress, 1st session. July 17, 1985. Washington, G.P.O., 1985. 257 p.

U.S. Congress. House. Committee on Government Operations. Legislation and National Security Subcommittee. Implementation of the Paperwork Reduction Act of 1980 (Public Law 96-511). Hearing, 97th Congress, 1st session. Oct. 21, 1981. Washington, G.P.O., 1982. 266 p.

U.S. General Accounting Office. Fair housing: OMB review of HUD requests to collect information from the public; fact sheet for congressional requestors. Nov. 1985. Washington, G.A.O., 1985. 13 p.
"GAO/HRD-86-33FS"

----- Federal information systems remain highly vulnerable to fraudulent, wasteful, abusive, and illegal practices; report. Apr. 21, 1982. Washington, G.A.O., 1982. 29 p.
"MASAD-82-18"
"The Office of Management and Budget, which is responsible for Federal information policy, must clarify guidance concerning automated information security and take a stronger oversight role. Executive agencies must establish and maintain cost-effective administrative, physical, and technical controls to protect their automated information systems."

----- Government-wide guidelines and management assistance center needed to improve ADP systems development; report. Feb. 20, 1981. Washington, G.A.O., 1981. 24 p.
"AFMD-81-20"
"The Director, Office of Management and Budget, should issue guidelines for a structured management approach to ADP systems development, require use of the guidelines throughout the Government, and set up a cost-reimbursable center to assist agency top management in planning, designing, acquiring, and evaluating large, complex ADP systems development projects."

----- The Office of Management and Budget's actions show progress in implementing the Paperwork Reduction Act of 1980; [report to] the Honorable Jack Brooks, Chairman, Committee on Government Operations, House of Representatives. Sept. 7, 1984. Washington, G.A.O., 1984. 22 p.
"GAO/IMTEC-84-24"
Concludes that OMB's Office of Information and Regulatory Affairs has improved its performance further since GAO's previous report in April 1983.

Intergovernmental Management

Beam, David R. The Presidency and intergovernmental relations. Intergovernmental perspective, v. 2, summer 1976: 6-11.
Presents recommendations of the Advisory Commission on Intergovernmental Relations for organizing the Domestic Council and OMB for intergovernmental policy development and management of Federal aid programs.

Kettl, Donald F. The uncertain brides: regulatory reform in Reagan's New Federalism. In Publius: annual review of American Federalism, 1981. Edited by Stephen L. Schecter. Lanham, Md., University Press of America, Co-published by arrangement with the Center for the Study of Federalism, Temple University, c1983. p. 19-34.

"Reagan's plan gives OMB a central place in intergovernmental relations."

Morris, Milton D. The Federal A-95 review process: making it work for minority groups. Washington, Joint Center for Political Studies, 1975. 32 p.

Partial contents.--Scope and objectives of Circular A-95.--Mechanics of the A-95 review process.--A-95 and the protection of minority interests.--Increasing the effectiveness of A-95 review in aiding minorities.--Using A-95 at the local level.

Rothenberg, Irene Fraser. National support for regional review: Federal compliance and the future of intergovernmental coordination. Publius, v. 13, fall 1983: 43-58.

"In 1969, OMB issued Circular A-95 to broaden the 'confidential exchange' between applicants and federal agencies, to provide state and local clearinghouses an opportunity to review federal assistance applications. Because President Reagan recently signed Executive Order 12372 revoking A-95 and making states responsible for procedures governing regional coordination of federal programs, this is a useful time to analyze and evaluate the A-95 experience."

----- "Out with the old, in with the new": the New Federalism, intergovernmental coordination, and Executive Order 12372, by Irene Fraser Rothenberg and George J. Gordon. Publius, v. 14, summer 1984: 31-47.

"An important New Federalism initiative of the Reagan administration has been the effort to ease the burdens of intergovernmental regulation, and in particular to alter the system of intergovernmental coordination. The issuance in 1982 of Executive Order 12372, to replace OMB Circular A-95, triggered spirited controversy and intensive negotiations among major institutional actors in intergovernmental coordination."

----- Regional coordination of Federal categorical grants: change and continuity under the New Federalism. Journal of the American Planning Association, v. 51, spring 1985: 200-208.

"OMB Circular A-95 . . . gave state and local governments a chance to review and comment of federal grant assistance proposals in the region. In 1982, as part of the New Federalism effort to 'provide regulatory relief' and 'restore rightful authority to state and local government,' President Reagan rescinded Circular A-95 and gave state governments primary responsibility for designing and implementing a new review process."

----- Regional coordination of Federal programs: has the difficult grown impossible? Journal of policy analysis and management, v. 4, fall 1984: 1-16.

"As the various categorical programs of federal assistance proliferated during the 1960s and 1970s, the U.S. government sought to bring about some degree of coordination among the programs in any given region through a network of regional clearinghouses. . . . In 1982, as a step in the New Federalism concepts of the Reagan administration, the clearinghouse system was drastically shrunk back in scope and decentralized in structure."

Russo, Philip A., Jr. In search of intergovernmental coordination: the A-95 project notification and review system. Publius, v. 12, spring 1982: 49-62.

"This article, first, briefly reviews the context of bureaucratic politics in the intergovernmental system and the nature of [Project Notification Retrieval System], its benefits, problems, and potential in achieving intergovernmental coordination. Second, it examines OMB recommendations to improve the process and then concludes that achieving intergovernmental coordination of categorical assistance may be beyond beyond the scope of PNRS."

U.S. Congress. Senate. Committee on Governmental Affairs. Subcommittee on Intergovernmental Relations. Geographic distribution of Federal funds. Hearing, 97th Congress, 2d session, on S. 2386 and S.J. Res. 146. May 12, 1982. Washington, G.P.O., 1982. 139 p.

U.S. General Accounting Office. Accuracy, cost, and users of the Consolidated Federal Funds Report; report by the Comptroller General of the United States. Oct. 1, 1984. Washington, G.A.O., 1984. 85 p.

"GAO/AFMD-85-1"

Issued by the Census Bureau, acting as executive agent for OMB, "the report provides statistical data on the geographic distribution of federal funds to states, counties, municipalities, and congressional districts."

----- Agencies need better guidance for choosing among contracts, grants, and cooperative agreements; report by the Comptroller General of the United States. Sept. 4, 1981. Washington, G.A.O., 1981. 88 p.

"GGD-81-88"

"The Federal Grant and Cooperative Agreement Act distinguishes Federal procurement from Federal assistance relationships and further distinguishes between grant and cooperative agreement types of Federal assistance. However, Federal agencies do not always select the appropriate instrument because of vague OMB guidance and less-than-agressive implementation. . . . GAO recommends that the Office of Management and Budget clarify its guidance, more actively direct and oversee Federal agencies' implementation of the act, and establish clear differences among contracts, grants, and cooperative agreements."

----- Issues concerning implementation of a revised process for intergovernmental review of Federal programs; [report to] the Honorable David A. Stockman, Director, Office of Management and Budget. Oct. 17, 1984. Washington, G.A.O., 1984. 9 p.

"GAO/GGD-85-2"

Reports the results of a survey of the early implementation of Executive Order 12,372, a new coordination process designed to replace the review and comment process under former OMB Circular A-95, which was felt to have "become highly bureaucratic and burdensome."

Zemansky, Stanley D. Needed reforms in Federal grant procurement management. Government executive, v. 13, Apr. 1981: 30, 32, 34-35.

"Federal Grantor agencies are attempting, to over-regulate down to detail procedural levels in State and local procurement practices. . . . What is basically needed is a uniform, understandable and enforceable Federal policy on procurements under Federal grants."

Procurement Management

Borklund, C. W. OFPP: an ombudsman "of large but uncertain dimension." Government executive, v. 7, Feb. 1975: 19-21.

"Newly created Office of Federal Procurement Policy wields far more power than the 'procurement community' realizes."

Durant, Peter M. A billion dollar proposal. Bureaucrat, v. 13, winter 1984-1985: 53-57.

OMB administrator describes the policy on performance of commercial activities by Federal agencies, set forth in Circular A-76. "Fair competition with the private sector for the performance of commercially available support services can significantly enhance federal productivity," he believes. Appends a criticism of the A-76 program by James Colvard (p. 56-57) and a response by Durant (p. 57).

Feidelman, Joel R., and Estelle E. Friedman. Application of U.S. contracting-out policy debated. Legal times, v. 5, May 30, 1983: 12, 16-18.

"There is virtually unanimous endorsement of the government's general policy, embodied in Office of Management and Budget (OMB) Circular A-76, of contracting out commercial and industrial functions when private industry can provide a product or service as well as and at lower cost than the government. There is substantial disagreement, however, as to how this policy should be applied, implemented, and enforced."

National Property Management Conference (1st : 1980 : Charlottesville, Va.) Proceedings. [Washington, Federal Supply Service, General Services Administration, 1981] 112 p.

This conference addressed issues of concern to Federal property management executives. The topics presented included the role of GSA; interagency inspector general audit of property management; congressional considerations; training for property management officers; and the role of the Office of Federal Procurement Policy.

OMB's "wall of separation" against tax-funded advocacy. Regulation, v. 7, Jan.-Feb. 1983: 8-11.

"About a year ago, the Reagan administration declared its opposition in principle to advocacy funding, and now the Office of Management and Budget has published proposed regulations [circular A-122] to crack down on the use of funds for political persuasion."

Oliver, Dale Hugh. A critical analysis of OFPP's proposal for a uniform Federal procurement system: reducing competition in the government marketplace. Federal Bar news & journal, v. 29, Mar. 1982: 112-120.

Warns that the Office of Federal Procurement Policy's proposed system "is not in the best interest of this country's economic system." Predicts that the changes, if passed, "will act to reduce competition by creating oligopolies and will over the long run increase prices paid by the Government."

President's Private Sector Survey on Cost Control (U.S.) Report on procurement/ contracts/inventory management. Approved by the Subcommittee for the full Executive Committee, spring-fall 1983. Washington, For sale by the Supt. of Docs., G.P.O., 1984. 147 p.

Grace Commission task force report discusses procurement, weapons acquisition, inventory management, civilian agency organization, and procurement efficiency.

Remes, David H. How new OMB rule will affect tax-exempt groups politically. National law journal, v. 6, June 4, 1984: 21-23.

"If the new rule [Circular A-122] is enforced with the sensitivity to First Amendment values promised by OMB in its accompanying explanatory statement, it could be that, even though no rule would have been preferable, tax-exempt organizations will face little genuine risk of losing reimbursement for very much expressive activity that peviously would have been treated as allowable."

Russell, William. OMB Circular A-76: how to make contracting out for services harder than ever. Government executive, v. 15, Oct. 1983: 78-79, 81, 83.

"A critique of the current situation reveals that, OMB claims to the contrary, the new A-76 really restricts Federal agency options in the whole area of contracting out. Will there be credible and fair implementation?"

U.S. Commission on Federal Paperwork. Procurement: a report. Washington [For sale by the Supt. of Docs., G.P.O.] 1977. 103 p.

"This report provides recommendations on the simplification of procurement procedures, the elimination of overlapping guidelines, jurisdictions and legislation, and the easing of burden on small contractors."

U.S. Commission on Government Procurement. Report. [Washington, For sale by the Supt. of Docs., G.P.O.] 1972. 4 v.

Volume 1 contains general procurement considerations; volume 2 covers acquisition of research and development and acquisition of major systems; volume 3 covers acquisition of commercial products, acquisition of construction and architect-engineer services, and Federal grant-type assistance programs; volume 4 identifies legal and administrative remedies, selected issues of liability: government property and catastrophic accidents; patents, technical data, and copyrights; and other statutory considerations.

U.S. Congress. House. Committee on Government Operations. The President's suspension of the Competition in Contracting Act is unconstitutional; seventh report together with separate and additional views. Washington, G.P.O., 1985. 45 p. (Report, House, 99th Congress, 1st session, no. 99-138)

U.S. Congress. House. Committee on Government Operations. Legislation and National Security Subcommittee. Administration proposal threatens First rights of government grantees and contractors. Hearings, 98th Congress, 1st session. Mar. 1, 1983. 474 p.
Hearings on OMB Circular A-122.

----- Constitutionality of GAO's bid protest function. Hearings, 99th Congress, 1st session. Feb. 28 and Mar 7, 1985. Washington, G.P.O., 1985. 846 p.

----- The new proposed revisions to OMB circular A-122. Hearing, 98th Congress, 1st session. Nov. 10, 1983. Washington, G.P.O., 1984. 243 p.

----- Office of Federal Procurement Policy. Hearings, 93rd Congress, 1st session, on H.R. 9059. July 11-30, 1973. Washington, G.P.O., 1973. 457 p.
"To create an Office of Federal Procurement Policy within the Executive Office of the President."

U.S. Congress. House. Committee on the Judiciary. Subcommittee on Civil and Constitutional Rights. First Amendment effect on OMB's proposal on use of Federal grant monies. Oversight hearing, 98th Congress, 1st session. Mar. 9, 1983. Washington, G.P.O., 1985. 87 p.
"Serial no. 117"
Hearings on OMB Circular A-122.

U.S. Congress. House. Committee on Post Office and Civil Service. Subcommittee on Human Resources. Implementation of Circular A-76. Hearings, 98th Congress, 2nd session. Sept. 20 and 25, 1984. Washington, G.P.O., 1985. 470 p.
"Serial no. 98-57"

----- Review of OMB circular A-76 and contracting out. Hearing, 98th Congress, 2nd session. July 11, 1984. Washington, G.P.O, 1984. 36 p.

U.S. Congress. Senate. Committee on Armed Services. Impact of proposed regulatory authority of the Office of Federal Procurement Policy on national defense and related government activities. Hearing, 98th Congress, 1st session. Oct. 19, 1983. Washington, G.P.O., 1984. 214 p. (Hearing, Senate, 98th Congress, 1st session, S. Hrg. 98-589)

U.S. Congress. Senate. Committee on Government Operations. Ad Hoc Subcommittee on Federal Procurement. Establishing Office of Federal Procurement Policy. Hearings, 93rd Congress, 1st session, on S. 2198 and S. 2510. Oct. 31-Nov. 15, 1973. Washington, G.P.O., 1974. 301 p.

U.S. Congress. Senate. Committee on Governmental Affairs. Subcommittee on Federal Expenditures, Research, and Rules. Oversight of the Federal procurement system. Hearing, 97th Congress, 1st session. Washington, G.P.O., 1981. 3 v.

Part 1. Hearings held May 15, 1981, Washington, D.C.--Part 2. Hearings held May 2, 1981, St. Louis, Mo.--Part 3. Hearings held July 2, 1981, Kansas City, Mo.

These hearings identify major problems and present testimony from construction contractors, small business and minority contractors, and defense contractors on the "problems they have encountered in doing business with the Federal Government."

U.S. Congress. Senate. Committee on Governmental Affairs. Subcommittee on Intergovernmental Relations. Uniform Lobbying Cost Principles Act of 1984. Hearing, 98th Congress, 2nd session, on OMB circular A-122 and S. 2251. Apr. 2, 1984. Washington, G.P.O., 1984. 171 p. (Hearing, Senate, 98th Congress, 2nd session, S. Hrg. 98-840)

U.S. Congress. Senate. Committee on Governmental Affairs. Subcommittee on Oversight of Government Management. Oversight of the Grace Commission's procurement recommendations. Hearing, 99th Congress, 1st session. Jan. 23, 1985. Washington, G.P.O., 1985. 584 p. (Hearing, Senate, 99th Congress, 1st session, S. Hrg. 99-26)

----- Reauthorization of the Office of Federal Procurement Policy. Hearing, 98th Congress, 1st session, on S. 1001. Apr. 27, 1983. Washington, G.P.O., 1983. 330 p. (Hearing, Senate, 98th Congress, 1st session, S. Hrg. 98-139)

U.S. General Accounting Office. Data collection under the International Agreement on Government Procurement could be more accurate and efficient; report. Oct. 25, 1983. Washington, G.A.O., 1983. 13 p.

"GAO/NSIAD-84-1"

"OMB established the trade data system to collect government procurement information as required by the International Agreement on Government Procurement. This system, which could at best collect approximate data, developed information that significantly over-valued procurements and did not fully report other essential information. Given the limited resources available and the low priority the collecting agencies place on the trade data system, GAO recommends . . . that OMB abolish this system and use the Federal Procurement Data System to collect the information."

----- DOD functions contracted out under OMB circular A-76: costs and status of certain displaced employees; report. July 12, 1985. Washington, G.A.O., 1985. 10 p.

"GAO/NSIAD-85-90"

"Responses from 94 of 129 involuntarily separated employees showed that 53 received unemployment compensation and/or public assistance. GAO estimated that payments to these individuals would be $215,000, which would have little effect on DOD's estimated savings of $65,484,000 from contracting out. Responses from 130 of 171 individuals who went to work for contractors showed that 69 received lower wages than they had received as government employees."

----- Effective management of computer leasing needed to reduce government costs; report to the Congress by the Comptroller General of the United States. Mar. 21, 1985. 71 p.

"GAO/IMTEC-85-3"

"Federal agencies spent about $1.1 billion to lease computer hardware in fiscal year 1983. GAO believes agencies that intend to retain installed computer technology can save on existing leases by buying already installed equipment, where appropriate; refinancing existing leases; exercising contract options to change from lease to installment purchase; or reusing excess government-owned or government-leased equipment."

----- The International Agreement on Government Procurement: an assessment of its commercial value and U.S. Government implementation; report. July 16, 1984. Washington, G.A.O., 1984. 81 p.

"GAO/NSIAD-84-117"

"Assesses the commercial impact of the Agreement and government efforts to: help U.S. firms participate in covered procurements, monitor foreign government compliance, and analyze the relative benefits of U.S. government participation in the Agreement."

----- Progress of Federal procurement reform under Executive Order 12352; report by the Comptroller General of the United States. June 17, 1983. Washington, G.A.O., 1983. 51 p.

"GAO/PLRD-83-88"

"A comprehensive plan has been developed and considerable work to design the reforms is ongoing. In addition, an official, referred to as the Procurement Executive, has been appointed in each agency to manage its procurement system."

U.S. Office of Federal Procurement Policy. Proposal for a uniform federal procurement system. [Washington] Executive Office of the President, Office of Management and Budget, Office of Federal Procurement Policy, 1982. 148 p.

Wines, Michael. Lobbyists unite to lobby against OMB's proposed curbs on lobbying. National journal, v. 15, Feb. 19, 1983: 370-372.

"Washington lobbyists on the right and left are united in opposing rules [OMB Circular A-122] that would cut the ties between federal grants and contracts and political advocacy."

Yoder, Eric. Contracting out. Federal times, v. 21, May 20, 1985: 12-13, 20.

Examines the impact of OMB Circular A-76 in the Department of Defense. "The Defense Department, where most of the government's commercial and industrial type jobs are located, is especially involved in controversies over cost overruns, contractor performance, loss of federal jobs and the debate over what type of work is inherently governmental."

Government Organization

ASTM and the OMB circular A119: Federal participation in the development and use of voluntary standards. A seminar sponsored by ASTM, Washington, DC, May 18, 1983. Philadelphia, American Society for Testing Materials, 1983. 46 p.

"This booklet is based on a recent workshop sponsored by ASTM.

In relatively few words it speaks volumes about the genesis and implementation of OMB Circular A119 and the role government has played and continues to play in the voluntary standards system."

Bell, Robert. Professional values and organizational decision making. Administration & society, v. 17, May 1985: 21-60.

"Investigates the interplay between professional values and organizational purposes in the organizations that formulated federal subsidized housing policy between 1968 and 1977. Policy professionals in these organizations are committed to public finance theory, a branch of welfare economics that stresses policy criteria consistent with classical liberalism. Public finance theory was consistently influential in the President's Office of Management and Budget, briefly influential in the Department of Housing and Urban Development, and never influential in Congress."

Emerich, Herbert. Federal organization and administrative management. University, University of Alabama Press, 1971. 304 p.

Partial contents.--Executive reorganization--a continuing process.--The President's Committee on Administrative Management (Brownlow Committee).--Administrative legacy of Franklin D. Roosevelt.--Hoover I.--Hoover II.--Agencies, Federalism, and Congress.--Unfinished business.

Fisher, Louis, and Ronald C. Moe. Presidential reorganization authority: is it worth the cost? Political science quarterly, v. 96, summer 1981: 301-318.

The authors, in focusing attention on the drawbacks of the President's authority to propose executive reorganization plans to Congress, include several examples of OMB's role in the process of proposing and winning approval of a plan.

Hawley, Willis D., and Beryl A. Radin. The Presidency and domestic policy: organizing the Department of Education. In The Presidency and the political system. Michael Nelson, editor. Washington, Congressional Quarterly Press, c1984. p. 449-470.

Reviews the decision processes that explain the establishment of the Department of Education during the Carter Administration as a case study in domestic policy making. The authors focus on, first, Presidential involvement in the process, and, second, on the complexity of processes within the executive branch, "illustrated by the actions of individuals within the president's immediate staff, the vice president's office, the Office of Management and Budget (OMB), and the Domestic Policy staff, as well as top officials of executive departments and agencies."

Jenkins-Smith, Hank C., and David L. Weimer. Analysis as retrograde action: the case of strategic petroleum reserves. Public administration review, v. 45, July-Aug. 1985: 485-494.

Examines the effort of OMB to reduce the size of the strategic petroleum reserve as a case study of the "use of policy analysis as a retrograde tactic in bureaucratic politics. Employed by those opposed to a policy initiative, the retrograde tactic permits bureaucrats to delay and sometimes reverse political initiatives at various stages of the policy process through the demand for analysis."

Point man for the Carter reorganization. Nation's business, v. 66, Oct. 1978: 46, 48-49.

Profiles William Harrison Wellford, executive associate director for reorganization and management in the Office of Management and Budget.

Rubin, Irene S. Shrinking the Federal Government: the effect of cutbacks on Federal agenices. New York, Longman, c1985. 224p.

Partial contents.--President Reagan's cutback program.--The Bureau of Health Planning: the threat of termination.--The Employment and Training Administration: budget cuts by the President and Congress.--Community Planning and Development: proposed termination, resistance, and deregulation.--The Urban Mass Transportation Administration: reorganization, reduction in force, and reauthorization.--The Office of Personnel Management: cutting back the Federal work force and cutting back OPM.

Seidman, Harold. Politics, position, and power: the dynamics of Federal organization. 3d ed. New York, Oxford University Press, 1980. 367 p.

Purposes to "identify and describe the strategic and tactical uses of organization type and structure; the interrelationships among the executive branch, the Congress and State and local governments in the administrative process; the linkages between executive branch and congressional organization; institutional culture and personality as a determinant of organizational behavior; and the political and administrative significance of various coordinating devices and the rich variety of institutional types."

U.S. Congress. House. Committee on Government Operations. Legislation and National Security Subcommittee. The budget process: potential impairment of the independence of inspectors general. Hearing, 98th Congress, 2nd session. Sept. 26, 1984. Washington, G.P.O., 1985. 83 p.

U.S. General Accounting Office. Compilation of recommendations to the Office of Management and Budget for improving government operations; report to the House Committee on Government Operations by the Comptroller General of the United States. Washington, G.A.O., 1977. Sept. 13, 1977. 41 p.

"GGD-77-85"

"GAO has made many recommendations to the Office of Management and Budget on how to improve government operations in various functional areas. Much has been done to improve government operations through the combined efforts of GAO and the Office of Management and Budget. GAO believes, however, that the Office has not done as much as it could have to implement some recommendations and, to that extent, has slowed the related benefits."

----- OMB needs to more fully consider government-wide implications in its telecommunications initiatives; [report to] the Honorable Jack Brooks, chairman, Committee on Government Operations, House of Representatives. Sept. 7, 1984. Washington, G.A.O., 1984. 15 p.
"GAO/IMTEC-84-21"
"Since enactment of the Paperwork Reduction Act, OMB has begun several telecommunications and telecommunications-related initiatives, including the [Federal Telecommunications System] initiative. However, OMB's current agency-by-agency approach to developing telecommunications policies and plans does not ensure that government-wide issues are being examined before such policies and plans are finalized."

----- OMB's study of decentralization of Federal governmental functions; report. May 29, 1980. Washington, G.A.O., 1980. 57 p.
"LCD-80-57"
"In GAO's opinion, the most significant result of the OMB study was its objective, well-balanced, and informative discussion of various types of costs, benefits, and other factors associated with decentralization."

----- Summaries of conclusions and recommendations on the operations of civil departments and agencies; report to the House and Senate Committees on Appropriations by the Comptroller of the United States. Feb. 28, 1985. Washington, G.A.O., 1985. 419 p.
"GAO/OIRM-85-1"
Reviews GAO reports "on which satisfactory legislative or administrative actions have not been taken" as of November 1, 1984. GAO sends copies of this report to OMB and to Federal departments and agencies so they may respond to congressional inquiries about it during appropriations hearings.

Legislative Clearance

Dickerson, Reed. The Catholic University study of Federal legislative drafting in the executive branch. Catholic University law review, v. 21, summer 1972: 703-907.
Law review staff survey and analysis (sponsored by the American Bar Foundation) examines OMB, the Federal Trade Commission, and the Departments of Defense, Housing and Urban Development, Transportation, Health, Education, and Welfare, and Justice.

Gilmour, Robert S. Central legislative clearance: a revised perspective. Public administrtion review, v. 31, Mar.-Apr. 1971: 150-158.
"This article identifies the steps normally taken within and between operating agencies before legislative clearance is in any way centralized in the Executive Office of the President."

Havemann, Joel. OMB's legislative role is growing more powerful and more political. National journal reports, v. 5, Oct. 27, 1973: 1589-1598.
Finds that the Nixon administration "has taken the big decisions from OMB's nonpartisan legislative references division and given them to a new group of political appointees."

Neustadt, Richard E. Presidency and legislation: the growth of central clearance. American political science review, v. 48, Sept. 1954: 641-671.

Examines the development of the Bureau of the Budget's Office of Legislative Reference. "Legislative clearance. . . is by for the oldest, best intrenched, most thoroughly institutionalized of the President's coordinative instruments--always excepting the budget itself."

Wayne, Stephen J. The legislative Presidency. New York, Harper & Row, c1978. 240 p.

Partial contents.--Making legislative policy: the development of a Presidential role.--Providing legislative clearance and coordination: White House-OMB interaction.--Overseeing the administration: the business of implementation.

----- Advising the President on enrolled legislation: patterns of executive influence, by Stephen J. Wayne, Richard L. Cole, and James F. C. Hyde, Jr. Political science quarterly, v. 94, summer 1979: 303-317.

Authors "analyze presidential decisions to approve or veto enrolled bills during the Nixon and Ford years. . . . Presidential action was closely related to advice from the agency most directly affected by the proposed legislation and especially the Office of Management and Budget."

----- Presidential decision-making on enrolled bills, by Stephen J. Wayne and James F. C. Hyde, Jr. Presidential studies quarterly, v. 8, summer 1978: 284-296.

Outlines the procedures by which OMB gathers and evaluates advice on whether the President should approve or veto a bill.

Regulation Management

Association of the Bar of the City of New York. Committee on Federal Legislation. Regulatory reform legislation. Record of the Association of the Bar of the City of New York, v. 37, Dec. 1982: 703-731.

Supports the provisions for informal rulemaking embodied in the proposed Regulatory Reform Act (S.1080, 97th Congress), but objects to the judicial review, congressional veto, and OMB provisions in the bill.

Ball, Howard. Controlling regulatory sprawl: Presidential strategies from Nixon to Reagan. Westport, Conn., Greenwood Press, c1984. 206 p. (Contributions in political science, no. 105)

Reviews efforts to manage the Federal regulatory process from 1969 to 1981 and then focuses on the Reagan administration's effort to use OMB's Office of Information and Regulatory Affairs to preclear regulatory proposals, a system set up under Executive Order 12,291. The author presents a case study of the controversy surrounding OMB's response to the Occupational Safety and Health Administration's proposed toxic chemical labeling standard.

Bryner, Gary C. Regulatory rule making and the process of policy formation. In Public policy formation. Edited by Robert Eyestone. Greenwich, Conn., JAI Press, c1984. (Public policy studies, v. 2) p. 291-323.

Examines "in detail the rule-making process of one federal regulatory agency--the Environmental Protection Agency--in order to provide an in-depth description of how an agency formulates important policies through the rulemaking process, and to analyze how procedural provisions define the interests that are to have access to the policy -making process, the factors to be considered, and the extent to which policy makers will be held accountable."

Clark, Timothy B. Do the benefits justify the costs? Prove it, says the Administration. National journal, v. 13, Aug. 1, 1981: 1382-1386.

Discusses issues in the Reagan Administration's use of cost-benefit analysis in regulatory decisions, including the role of OMB.

----- If Reagan wants to trump the regulators, here's OMB's target list for openers. National journal, v. 13, Jan. 17, 1981: 94-98.

"The staff of the Office of Management and Budget has prepared a list of 242 regulations that the Reagan Administration might want to modify. National Journal has listed the 110 that the OMB staff has marked for prompt review."

----- OMB to keep its regulatory powers in reserve in case agencies lag. National journal, v. 13, Mar. 14, 1981: 424-429.

Examines OMB's regulatory review role.

Eads, George. Harnessing regulation: the evolving role of White House oversight. Regulation, v. 5, May-June 1981: 19-26.

Chairman of the Carter administration's Regulatory Analysis Review Group evaluates the prospects for OMB's new Office of Information and Regulatory Affairs in monitoring agency regulation-producing processes.

----- Relief or reform? Reagan's regulatory dilemma, by George C. Eads and Michael Fix. Washington, Urban Institute Press, c1984. 285 p. (Changing domestic priorities series)

Partial contents.--Precedents for executive branch oversight.--Regulatory oversight in the Reagan White House.--Agency management strategies.--Assessing Reagan's regulatory relief program.

Environmental policy under Reagan's executive order: the role of benefit-cost analysis. Edited by V. Kerry Smith. Chapel Hill, University of North Carolina Press, c1984. 266 p. (Urban regional policy and development studies)

Contents.--The background for and implementation of Executive Order 12291.--Conceptual problems in meeting the benefit-cost mandate of Executive Order 12291.--Will Executive Order 12291 improve environmental policy making?

Fix, Michael, and George C. Eads. The prospects for regulatory reform: the legacy of Reagan's first term. Yale journal on regulation, v. 2, no. 2, 1985: 293-318.

Article analyzes regulatory policy during Reagan's first term and focuses on second-term prospects for reform in four major areas: expanded use of market mechanisms; devolution of regulatory authority to the States; White House regulatory oversight, including the role of OMB; and revision of major statutes.

Hibbing, John R. The independent regulatory commissions fifty years after Humphrey's Executor v. U.S. Congress & the Presidency, v. 12, spring 1985: 57-68.

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"A large disparity exists between the hundreds of millions of dollars in federal contract and grant costs questioned by auditors, and the much smaller totals that program managers eventually disallow and contractors and grantees are required to repay to the government. GAO reviewed the way questioned costs are resolved at six major federal agencies."

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----- Federal year-end spending patterns for fiscal years 1982, 1983, and 1984; report to the Honorable Ted Stevens, United States Senate. Sept. 17, 1985. Washington, G.A.O., 1985. 30 p.
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----- Federal year-end spending: symptom of a larger problem; report to the Honorable Stewart B. McKinney, United States House of Representatives by the Comptroller General of the United States. Oct. 23, 1980. Washington, G.A.O., 1980. 104 p.
"PAD-81-18"
"We believe that year-end surges may be the symptom of a larger problem--the failure by agencies and the Office of Management and Budget to effectively monitor and manage the execution of the budget, as already required by the Anti-deficiency Act."

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"GAO/OCG-84-3"

----- Managing the cost of government: building an effective financial management structure; [report from the] Comptroller General of the United States. Feb. 1985. Washington, G.A.O., 1985. 2 v. (23, 65 p.)
"GAO/AFMS-85-35 [and] GAO/AFMD-85-35-A"

Finds that the present Federal financial management system suffers from a lack of cost information, a lack of reliable information on weapons systems, inadequate disclosure of costs and liabilities, unstructured planning for capital investment, and antiquated financial management systems. The report calls for a comprehensive, integrated reform, government-wide in scope, composed of strengthened accounting, auditing, and reporting, improved planning and programming, a streamlined budget process, and the systematic measure of performance.

----- Significant improvements seen in efforts to collect debts owed the Federal Government; report to the Chairman, Committee on the Budget, House of Representatives. Apr. 28, 1983. Washington, G.A.O., 1983. 74 p.

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"In fiscal 1982, the Office of Management and Budget maintained oversight of the administration's debt collection initiative. Based on its review of six Federal agencies' debt collection programs, GAO found that the increased focus on debt collection resulted in strengthened collection practices and increased collections."

----- Study of progress made in implementing the single audit concept; report to the Chairman, Committee on Government Operations, House of Representatives, by the Comptroller General of the United States. Mar. 14, 1984. Washington, G.A.O., 1984. 10 p.

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U.S. General Accounting Office. Information on internal EEO activities at selected Federal agencies. June 14, 1985. Washington, G.A.O., 1985. 8 p.

"GAO/GGD-85-62"

Analyzes data on civil rights activities submitted to OMB's Office of Civil Rights under OMB Circular A-11. "Because of inconsistencies in the ways agencies gathered and reported this data, it is difficult to attribute any differences between fiscal year 1981 and 1984 to a policy shift or to know with any degree of certainty how accurate or meaningful the data is."

----- Information on the administration's program to reduce grade 11-15 positions; [report to] the Honorable William D. Ford, chairman, Committee on Post Office and Civil Service, House of Representatives. Mar 28, 1985. Washington, G.A.O., 1985. 5 p.

"GAO/GGD-85-48"

Examines the justification for the program of OMB and the Office of Personnel Management to reduce approximately 40,000 midlevel Federal positions over a four-year period beginning in fiscal year 1985. After a review of the research used by the two agencies, GAO states that it is "not convinced that the studies cited provide a sound basis for initiating a governmentwide program to reduce 40,000 grade 11-15 positions."

----- Recent government-wide hiring freezes prove ineffective in managing Federal employment; report by the Comptroller General of the United States. Mar. 10, 1982. Washington, G.A.O., 1982. 29 p.

"FPCD-82-21"

"While the Government-wide hiring freezes reviewed . . . provided an illusion of control on Federal employment and spending, they had little effect on Federal employment levels, and it is not known whether they saved money."

----- Reduction in force can sometimes be more costly to agencies than attrition and furlough; report to the Director, Office of Management and Budget. July 24, 1985. Washington, G.A.O., 1985. 93 p.

"GAO/PEMD-85-6"

"This report documents an analysis of the savings and costs of eight RIFs and provides a methodology for agencies to use to compare the potential fiscal impacts of RIF and attrition when faced with the need to reduce staff size. It also contains an assessment of the extensiveness of downgrading that resulted from these RIFs. Finally, it includes a detailed analysis of the effects of these RIFs on the employment status of women and minorities."

APPENDIX II

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January 17, 1986

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INTRODUCTION

The purpose of this compilation is to fill a significant void in the vast and continuously expanding body of literature on the Office of Management and Budget (OMB).[1] Throughout its controversial, and often turbulent, history, OMB has frequently been the object of criticism on the ground that it has made unrestrained use of its "unaccountable power." In recent years some have questioned the legality of some aspects of its presumed authority or its use of that authority. The nature, scope, and source of OMB's authority, however, beyond vague allusions to its "control" over the budget process, clearance of legislative proposals, agency personnel ceilings, and, most recently, agency rulemaking, has never been precisely defined. It is hoped that this catalogue can be a useful resource and reference document in the continuing debate.

The history of the development of OMB has been well rehearsed.[2] Thus only a brief review is warranted here to provide a perspective to the compilation. From the time of its establishment as the Bureau of the Budget

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1/ On the scope of the present body of literature, see Walser, Office of Management and Budget: A Selected Annotated Bibliography (CRS, 1986).

2/ See particularly, Mosher, A Tale of Two Agencies (1984); Berman, The Office of Management and Budget and the Presidency, 1921-1979 (1979); Parris, The Office of Management and Budget: Background, Responsibilities, Recent Issues (CRS, July 27, 1978, # 78-158 Gov.). The following brief historical overview draws from these works.

in the Budget and Accounting of 1921, Pub. L. 67-13, 42 Stat. 20, BoB/OMB assumed the role of an activist presidential agency, the President's stalwart guardian of the public fisc and his agent in managing the departments and agencies. Since its inception it has been one of the principal support agencies directly responsible to the President, usually the major one with a permanent staff, and the only one, other than the White House staff, with a wide-ranging general jurisdiction. This was true even when it was situated physically and officially in the Treasury Department between 1921 and 1939. From its beginning it had the responsibility for assembling, publishing, and executing the Federal government's annual budget in behalf of the Chief Executive. Almost from the start it was also concerned with the coordination and clearance of proposed legislation and agency comments. Since the late 1930's, it has been variously involved in questions of management and organization of the executive branch. The nature and extent of such involvement have fluctuated over time, the last decade having seen a significant upswing, particularly in the area of regulatory management.

As a consequence, perceptions of BoB/OMB over time have fluctuated from a view of it as a simple budget-accounting agency staffed by neutral career bureaucrats with an exclusive concern in numbers of dollars to another view that it is the general staff of the President, involved in his behalf in every major problem and policy of the executive branch with the purpose of achieving that particular administration's policies and priorities.

But whatever the public sense of BoB/OMB's mission at any given moment, it has always been regarded as one of the most powerful institutions in the Federal government, an estimation that has grown in certainty as the role and responsibilities of American governments, and particularly the Federal government, have become an increasingly pervasive part of the life of our society. However, as long as the general goals of society appeared to be reflected with fair correspondence in both political branches, the nature and extent of BoB/OMB power, and the manner of its use of that power, has rarely been a matter of serious public controversy. In the early 1970's, however, President Nixon's assertion of inherent constitutional authority to impound appropriated funds, and his use of OMB to effectuate policy objectives through spending refusals, resulted in the first major interbranch confrontation in which OMB authority was a focal point of congressional attention. Congress' most significant responses with respect to OMB at that time were to: (1) require the advice and consent of the Senate for future appointments to the offices of director and deputy director of the agency;[3] (2) impose reporting requirements on the President and OMB with regard to any proposed rescissions or deferrals of budget authority;[4] (3) require the simultaneous submission by several independent agencies of budget requests to OMB and the Congress;[5] and (4) strip OMB of its authority to veto information collection requests of independent regulatory agencies.[6]

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[3] Pub. L. 93-250, 31 U.S.C. 502 (1982).

[4] 2 U.S.C. 683, 684a (1982).

[5] See, e.g., 7 U.S.C. 4a(h)(1)-(2)(1982)(Commodity Futures Trading Commission); 15 U.S.C. 2076(k)(1981)(Consumer Product Safety Commission); 19 U.S.C. 2232 (1982)(U.S. International Trade Commission), 31 U.S.C. 1108(f)(1982)(Interstate Commerce Commission); 39 U.S.C. 2009 (1982)(Postal Service).

[6] Pub. L. 95-153, sec. 409. Congress has since returned partial control over the independent regulatory commissions to OMB. Under the Paperwork Reduction Act OMB may now veto collection requests by such commissions but the veto may be overriden by a majority vote of the subject commission. 44 U.S.C. 3507(c)(1982).

The most recent, and continuing, era of confrontation was precipitated in 1981 by President Reagan's initiatives to achieve drastic budget cuts and deregulation. More than in any previous instances, OMB came into prominent public view as the leading governmental vehicle for achieving the President's policy objectives, primarily because of the highly visible and vocal leadership of its new director, David Stockman. Also, for the first time, the agency came under attack with respect to both the legality of the sources and use of the authorities it was exercising to manage the agency rulemaking process. Further, critics have alluded to the ability of OMB to bring to bear the "totality" of its vast powers to effect its will.[7/] But as has been indicated, just what that "totality" consists of has never been adequately set forth.

This catalogue is intended as a resource and reference document. It is designed to afford easy access to all significant OMB authorities and directives and, with the exception of circulars, their full text. The organization of the compilation is as follows: Part I contains OMB's statutory authorities and functions in the order in which they appear in the United States Code. Where the statutory assignment has been to the President, the

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[7/] See, e.g., Olson, The Quiet Shift of Power: Office of Management and Budget Supervision of Environmental Protection Agency Rulemaking Under Executive Order 12,291, 4 Va. J. of Res. L. 1 (1984).

the source of the delegation to OMB is noted. A short description of the substance of each provision is provided. Part II lists, in chronological order, currently effective executive orders by which the President has invested OMB with some aspect of his functions or authority. The substantive nature and scope of each is briefly identified. Part III provides the text of five OMB regulations that are codified in the Code of Federal Regulations. Part IV lists in numerical order currently effective OMB circulars. The content of the circulars are identified by their formal titles and a short descriptive summary. The voluminous nature of the circulars and supplementary bulletins and transmittal memoranda preclude inclusion of their full texts. However, they are readily available from the agency. See p. 257 infra.

This catalogue identifies 95 statutes, 58 executive orders, 5 regulations and 51 circulars which reflect OMB operational authorities. Ready access to any particular item is hopefully facilitated by the detailed Table of Contents and an index in which each inclusion is referenced at least twice.

Finally, this catalogue is qualified as "preliminary" in the sense that while a conscientious effort has been made to provide a comprehensive compilation, no assertion is made that it is complete. Omissions may be attributed to unintentional error although in some instances matter was not included because of a judgment of insubstantiality. Some matter may be included which may be viewed by some as inconsequential. Since our purpose was to provide the researcher with as total a picture of OMB as possible, the tendency may have been to err on the side of inclusion. In any event, we fully intend to periodically update this document and welcome suggestions for additions, deletions, and modifications.

STATUTORY AUTHORITIES

1. 2 U.S.C. 684(a)

OMB must notify Congress of any proposed budget authority rescissions or deferrals. Under INS v. Chadha 462 U.S. 919 (1983), deferrals may only be blocked by passage of a congressional enactment subject to presidential veto. See generally 2 U.S.C. 681-684 dealing with impoundment control.

§ 683. Rescission of budget authority

(a) Transmittal of special message

Whenever the President determines that all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided or that such budget authority should be rescinded for fiscal policy or other reasons (including the termination of authorised projects or activities for which budget authority has been provided), or whenever all or part of budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year, the President shall transmit to both Houses of Congress a special message specifying—

(1) the amount of budget authority which he proposes to be rescinded or which is to be so reserved;

(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific project or governmental functions involved;

(3) the reasons why the budget authority should be rescinded or is to be so reserved;

(4) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed rescission or of the reservation; and

(5) all facts, circumstances, and considerations relating to or bearing upon the proposed rescission or the reservation and the decision to effect the proposed rescission or the reservation, and to the maximum extent practicable, the estimated effect of the proposed rescission or the reservation upon the objects, purposes, and programs for which the budget authority is provided.

(b) Requirement to make available for obligation

Any amount of budget authority proposed to be rescinded or that is to be reserved as set forth in such special message shall be made available for obligation unless, within the prescribed 45-day period, the Congress has completed action on a rescission bill rescinding all or part of the amount proposed to be rescinded or that is to be reserved.

(Pub. L. 93-344, title X, § 1012, July 12, 1974, 88 Stat. 333.)

§ 684. Disapproval of proposed deferrals of budget authority

(a) Transmittal of special message

Whenever the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any officer or employee of the United States proposes to defer any budget authority provided for a specific purpose or project, the President shall transmit to the House of Representatives and the Senate a special message specifying—

(1) the amount of the budget authority proposed to be deferred;

(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific projects or governmental functions involved;

(3) the period of time during which the budget authority is proposed to be deferred;

(4) the reasons for the proposed deferral, including any legal authority invoked by him to justify the proposed deferral;

(5) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed deferral; and

(6) all facts, circumstances, and considerations relating to or bearing upon the proposed deferral and the decision to effect the proposed deferral, including an analysis of such facts, circumstances, and considerations in terms of their application to any legal authority and specific elements of legal authority invoked by him to justify such proposed deferral, and to the maximum extent practicable, the estimated effect of the proposed deferral upon the objects, purposes, and programs for which the budget authority is provided.

A special message may include one or more proposed deferrals of budget authority. A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the deferral is transmitted to the House and the Senate.

2. 3 U.S.C. 301

Allows President to delegate functions vested in him by Congress to other executive branch officials subject to Senate confirmation. The President has utilized this authorization to transfer a wide variety of substantive functions to OMB. See, e.g., E.O. 10,644 (establish hospital rates); E.O. 11,541 (delegation to OMB of all authority transferred to the President under Reorganization Plan No. 2 of 1970 creating OMB); E.O. 11,592 (functions under the River and Harbor Act of 1970 and the Flood Control Act of 1970); E.O. 11,609 (rulemaking and approval authority under various sections of titles 5, 10, 31, 40, 42 and 44 of the U.S. Code); E.O. 11,961 (administration of foreign investment surveys); E.O. 12,152 (rulemaking authority to implement systematic review of agency operations, with regard to employee acceptance of contributions, awards and other payments, and the absorption of agency costs of training); and E.O. 11,758 (authority under the Rehabilitation Act of 1973 with respect to the transfer of unexpended appropriations). The full text of these delegations may be found in Part II, Executive Orders.

§ 301. General authorization to delegate functions; publication of delegations

The President of the United States is authorized to designate and empower the head of any department or agency in the executive branch, or any official thereof who is required to be appointed by and with the advice and consent of the Senate, to perform without approval, ratification, or other action by the President (1) any function which is vested in the President by law, or (2) any function which such officer is required or authorized by law to perform only with or subject to the approval, ratification, or other action of the President: *Provided*, That nothing contained herein shall relieve the President of his responsibility in office for the acts of any such head or other official designated by him to perform such functions. Such designation and authorization shall be in writing, shall be published in the Federal Register, shall be subject to such terms, conditions, and limitations as the President may deem advisable, and shall be revocable at any time by the President in whole or in part.

(Added Oct. 31, 1951, ch. 655, § 10, 65 Stat. 712.)

3. 5 U.S.C. 305

President shall promulgate regulations for the systematic review of agency operations. The President delegated his authority under this provision to OMB under E.O. 12,152.

§ 305. Systematic agency review of operations

(a) For the purpose of this section, "agency" means an Executive agency, but does not include—

(1) a Government controlled corporation;
(2) the Tennessee Valley Authority;
(3) The Alaska Railroad;
(4) the Virgin Islands Corporation;
(5) the Atomic Energy Commission;
(6) the Central Intelligence Agency;
(7) the Panama Canal Commission; or
(8) the National Security Agency, Department of Defense.

(b) Under regulations prescribed and administered by the President, each agency shall review systematically the operations of each of its activities, functions, or organization units, on a continuing basis.

(c) The purpose of the reviews includes—

(1) determining the degree of efficiency and economy in the operation of the agency's activities, functions, or organization units;
(2) identifying the units that are outstanding in those respects; and
(3) identifying the employees whose personal efforts have caused their units to be outstanding in efficiency and economy of operations.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 380; Pub. L. 96-54, 2(a)(2), Aug. 14, 1979, 93 Stat. 381; Pub. L. 96-70, title III, § 3302(e)(1), Sept. 27, 1979, 93 Stat. 498.)

AMENDMENT OF SUBSEC. (a)

Pub. L. 97-468, title VI, § 615(b)(1)(A), Jan. 14, 1983, 96 Stat. 2578, provided that, on the date of transfer of the Alaska Railroad to the State pursuant to section 1203 of Title 45, Railroads, or other disposition pursuant to section 1210 of Title 45, whichever occurs first, subsec. (a) is amended by striking out par. (3), and redesignating pars. (4) to (8) as (3) to (7), respectively.

4. 5 U.S.C. 552a note

OMB establishes guidelines by which agencies implement the Privacy Act and oversees their implementation.

Guidelines and Regulations for Maintenance of Privacy and Protection of Records of Individuals

Section 6 of Pub. L. 93-579 provided that:

"The Office of Management and Budget shall—

"(1) develop guidelines and regulations for the use of agencies in implementing the provisions of section 552a of title 5, United States Code, as added by section 3 of this Act; and

"(2) provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies."

5. 5 U.S.C. 552a (O)

Agency must give OMB advance notice of any plan to alter or establish a new system of records required under the Privacy Act.

(o) Report on new systems

Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

6. 5 U.S.C. 1206(b)(5)(B)(ii), (c)(2)(A)

OMB is to be notified of any evidence of criminality in an agency investigation initiated by the Special Counsel of the Merit Systems Protection Board, or in its own investigation, which is reported to the Attorney General.

§ 1206. Authority and responsibilities of the Special Counsel

* * *

(B) In any case in which evidence of a criminal violation obtained by an agency in an investigation under paragraph (3) of this subsection is referred to the Attorney General—

(i) the report shall not be transmitted to the complainant; and

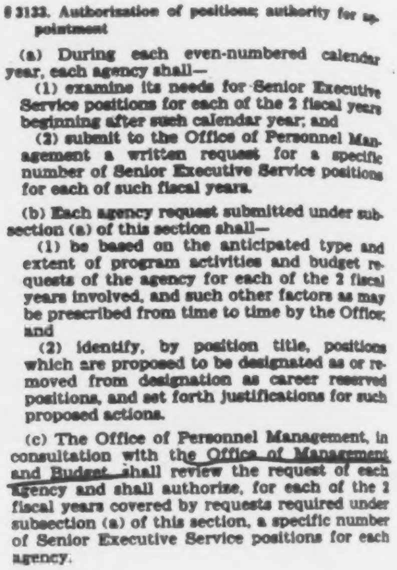
(ii) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

* * *

(2)(A) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that a criminal violation by an employee has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

7. 5 U.S.C. 3133

Office of Personnel Management must consult with OMB with respect to the number of Senior Executive Service (SES) positions each agency is to have. It is to be noted that up to ten percent of the total number of SES positions may be non-career (political) appointees. 5 U.S.C. 3134.



§ 3133. Authorization of positions; authority for appointment

(a) During each even-numbered calendar year, each agency shall—

(1) examine its needs for Senior Executive Service positions for each of the 2 fiscal years beginning after such calendar year; and

(2) submit to the Office of Personnel Management a written request for a specific number of Senior Executive Service positions for each of such fiscal years.

(b) Each agency request submitted under subsection (a) of this section shall—

(1) be based on the anticipated type and extent of program activities and budget requests of the agency for each of the 2 fiscal years involved, and such other factors as may be prescribed from time to time by the Office; and

(2) identify, by position title, positions which are proposed to be designated as or removed from designation as career reserved positions, and set forth justifications for such proposed actions.

(c) The Office of Personnel Management, in consultation with the Office of Management and Budget shall review the request of each agency and shall authorize, for each of the 2 fiscal years covered by requests required under subsection (a) of this section, a specific number of Senior Executive Service positions for each agency.

8. 5 U.S.C. 4112

President must provide for the absorption of employee training programs and plans by regulation. The function was transferred to OMB by E.O. 12,152.

§ 4112. Absorption of costs within funds available

(a) The President, to the extent he considers practicable, shall provide by regulation for the absorption of the costs of the training programs and plans under this chapter by the respective agencies from applicable appropriations or funds available for each fiscal year.

(b) Subsection (a) of this section may not be held or considered to require—

(1) the separation of an individual from the service by reduction in force or other personnel action; or

(2) the placement of an individual in a leave-without-pay status.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 437; Pub. L. 96-54, § 2(a)(2), Aug. 14, 1979, 93 Stat. 381.)

9. 5 U.S.C. 5901-5903

The President is empowered to issue regulations with respect to furnishing uniforms or payments for uniforms for Federal employees who must wear uniforms. The President delegated his rulemaking authority to OMB under Executive Order No. 11,541. See OMB Circular No. A-30, "Federal Employees Uniform Allowance Act."

CHAPTER 59—ALLOWANCES

SUBCHAPTER I—UNIFORMS

Sec.
5901. Uniform allowances.
5902. Increase in maximum uniform allowance.
5903. Regulations.

SUBCHAPTER I—UNIFORMS

§ 5901. Uniform allowances

(a) There is authorized to be appropriated annually to each agency of the Government of the United States, including a Government owned corporation, and of the government of the District of Columbia, on a showing of necessity or desirability, an amount not to exceed $125 multiplied by the number of employees of the agency who are required by regulation or statute to wear a prescribed uniform in the performance of official duties and who are not being furnished with the uniform. The head of the agency concerned, out of funds made available by the appropriation, shall—

(1) furnish to each of these employees a uniform at a cost not to exceed $125 a year; or

(2) pay to each of these employees an allowance for a uniform not to exceed $125 a year.

The allowance may be paid only at the times and in the amounts authorized by the regulations prescribed under section 5903 of this title. When the agency pays direct to the uniform vendor, the head of the agency may deduct a service charge of not more than 4 percent.

(b) When the furnishing of a uniform or the payment of a uniform allowance is authorized under another statute or regulation existing on September 1, 1964, the head of the agency concerned may continue the furnishing of the uniform or the payment of the uniform allowance under that statute or regulation, but in that event a uniform may not be furnished or allowance paid under this section.

(c) An allowance paid under this section is not wages within the meaning of section 409 of title 42 or chapters 21 and 24 of title 26.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 508; Pub. L. 90-83, § 1(39), Sept. 11, 1967, 81 Stat. 206.)

§ 5902. Increase in maximum uniform allowance

Notwithstanding section 5901 of this title, each of the respective maximum uniform allowances in effect on April 1, 1966, for the respective categories of employees to whom uniform allowances are paid under section 5901 of this title are increased, subject to the maximum allowance authorized by section 5901 of this title, as follows:

(1) If the maximum uniform allowance is $100 or more, it is increased by 25 percent.

(2) If the maximum uniform allowance is $75 or more but less than $100, it is increased by 30 percent.

(3) If the maximum uniform allowance is $50 or more but less than $75, it is increased by 35 percent.

(4) If the maximum uniform allowance is less than $50, it is increased by 40 percent.

The maximum uniform allowances, as in effect on April 1, 1966, and as increased by this section, may not be reduced.

(Added Pub. L. 90-83, § 1(40)(A), Sept. 11, 1967, 81 Stat. 206.)

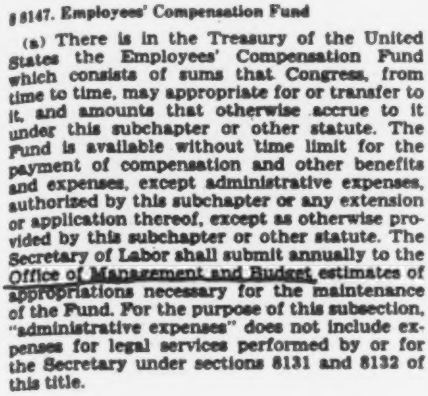
§ 5903. Regulations

The President shall prescribe regulations necessary for the uniform administration of this subchapter.

(Added Pub. L. 90-83, § 1(40)(A), Sept. 11, 1967, 81 Stat. 206, and amended Pub. L. 96-54, § 2(a)(2), Aug. 14, 1979, 93 Stat. 381.)

10. 5 U.S.C. 8147

The Secretary of the Treasury must furnish OMB with annual estimates of appropriations necessary to maintain the Employees Compensation Fund.



§ 8147. Employees' Compensation Fund

(a) There is in the Treasury of the United States the Employees' Compensation Fund which consists of sums that Congress, from time to time, may appropriate for or transfer to it, and amounts that otherwise accrue to it under this subchapter or other statute. The Fund is available without time limit for the payment of compensation and other benefits and expenses, except administrative expenses, authorized by this subchapter or any extension or application thereof, except as otherwise provided by this subchapter or other statute. The Secretary of Labor shall submit annually to the Office of Management and Budget estimates of appropriations necessary for the maintenance of the Fund. For the purpose of this subsection, "administrative expenses" does not include expenses for legal services performed by or for the Secretary under sections 8131 and 8132 of this title.

11. 5 U.S.C. Appendix

Reorganization Plan No. 2 of 1970 established OMB in its present form. All functions vested in law in its predecessor, the Bureau of the Budget, were transferred to the President. The President subsequently delegated those functions to the Director of OMB by E.O. 11,541. See Part II, Executive Orders for the text of the delegation. In 1982 Congress codified certain provisions of law concerning OMB and placed them in Title 31 of the U.S. Code.

REORGANIZATION PLAN NO. 2 OF 1970

Eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, as amended Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, 1085

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress Assembled, February 9, 1970, Pursuant to the Provisions of Chapter 9 of Title 5 of the United States Code.

OFFICE OF MANAGEMENT AND BUDGET; DOMESTIC COUNCIL

PART I. OFFICE OF MANAGEMENT AND BUDGET

SECTION 101. TRANSFER OF FUNCTIONS TO THE PRESIDENT

There are hereby transferred to the President of the United States all functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget.

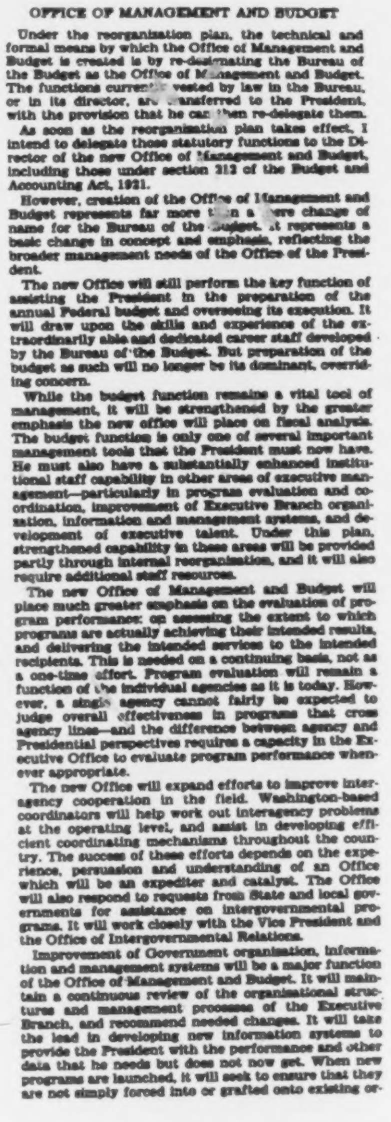
SEC. 102. OFFICE OF MANAGEMENT AND BUDGET

[Repealed. Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, 1085. Section designated the Bureau of the Budget as the Office of Management and Budget, provided for the officers and their duties, and provided for performance of the duties of the Director in the event of absence or disability or a vacancy in the office of Director. See section 501 et seq. of Title 31, Money and Finance.]

SEC. 103. RECORDS, PROPERTY, PERSONNEL, AND FUNDS

[Repealed. Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, 1085. Section provided that the records, property, personnel, and unexpended balances etc., of the Bureau of the Budget shall become those of the Office of Management and Budget.]

President Nixon's message accompanying the Executive Order explains the purposes of the reorganization with respect to OMB.



OFFICE OF MANAGEMENT AND BUDGET

Under the reorganization plan, the technical and formal means by which the Office of Management and Budget is created is by re-designating the Bureau of the Budget as the Office of Management and Budget. The functions currently vested by law in the Bureau, or in its director, are transferred to the President, with the provision that he can then re-delegate them.

As soon as the reorganization plan takes effect, I intend to delegate those statutory functions to the Director of the new Office of Management and Budget, including those under section 212 of the Budget and Accounting Act, 1921.

However, creation of the Office of Management and Budget represents far more than a mere change of name for the Bureau of the Budget. It represents a basic change in concept and emphasis, reflecting the broader management needs of the Office of the President.

The new Office will still perform the key function of assisting the President in the preparation of the annual Federal budget and overseeing its execution. It will draw upon the skills and experience of the extraordinarily able and dedicated career staff developed by the Bureau of the Budget. But preparation of the budget as such will no longer be its dominant, overriding concern.

While the budget function remains a vital tool of management, it will be strengthened by the greater emphasis the new office will place on fiscal analysis. The budget function is only one of several important management tools that the President must now have. He must also have a substantially enhanced institutional staff capability in other areas of executive management—particularly in program evaluation and coordination, improvement of Executive Branch organization, information and management systems, and development of executive talent. Under this plan, strengthened capability in these areas will be provided partly through internal reorganization, and it will also require additional staff resources.

The new Office of Management and Budget will place much greater emphasis on the evaluation of program performance: on assessing the extent to which programs are actually achieving their intended results, and delivering the intended services to the intended recipients. This is needed on a continuing basis, not as a one-time effort. Program evaluation will remain a function of the individual agencies as it is today. However, a single agency cannot fairly be expected to judge overall effectiveness in programs that cross agency lines—and the difference between agency and Presidential perspectives requires a capacity in the Executive Office to evaluate program performance whenever appropriate.

The new Office will expand efforts to improve interagency cooperation in the field. Washington-based coordinators will help work out interagency problems at the operating level, and assist in developing efficient coordinating mechanisms throughout the country. The success of these efforts depends on the experience, persuasion and understanding of an Office which will be an expediter and catalyst. The Office will also respond to requests from State and local governments for assistance on intergovernmental programs. It will work closely with the Vice President and the Office of Intergovernmental Relations.

Improvement of Government organization, information and management systems will be a major function of the Office of Management and Budget. It will maintain a continuous review of the organizational structures and management processes of the Executive Branch, and recommend needed changes. It will take the lead in developing new information systems to provide the President with the performance and other data that he needs but does not now get. When new programs are launched, it will seek to ensure that they are not simply forced into or grafted onto existing organizational structures that may not be appropriate. Resistance to organizational change is one of the chief obstacles to effective government; the new Office will seek to ensure that organization keeps abreast of program needs.

The new Office will also take the lead in devising programs for the development of career executive talent throughout the Government. Not the least of the President's needs as Chief Executive is direct capability in the Executive Office for insuring that talented executives are used to the full extent of their abilities. Effective, coordinated efforts for executive manpower development have been hampered by the lack of a system for forecasting the needs for executive talent and appraising leadership potential. Both are crucial to the success of an enterprise—whether private or public.

The Office of Management and Budget will be charged with advising the President on the development of new programs to recruit, train, motivate, deploy, and evaluate the men and women who make up the top ranks of the civil service, in the broadest sense of that term. It will not deal with individuals, but will rely on the talented professionals of the Civil Service Commission and the Departments and agencies themselves to administer these programs. Under the leadership of the Office of Management and Budget there will be joint efforts to see to it that all executive talent is well utilized wherever it may be needed throughout the Executive Branch, and to assure that executive training and motivation meet not only today's needs but those of the years ahead.

Finally, the new Office will continue the Legislative Reference functions now performed by the Bureau of the Budget, drawing together agency reactions on all proposed legislation, and helping develop legislation to carry out the President's program. It also will continue the Bureau's work of improving and coordinating Federal statistical services.

SIGNIFICANCE OF THE CHANGES

The people deserve a more responsive and more effective Government. The times require it. These changes will help provide it.

Each reorganization included in the plan which accompanies this message is necessary to accomplish one or more of the purposes set forth in Section 901(a) of Title 5 of the United States Code. In particular, the plan is responsive to Section 901(a)(1), "to promote the better execution of the laws, the more effective management of the Executive Branch and of its agencies and functions, and the expeditious administration of the public business;" and Section 901(a)(3), "to increase the efficiency of the operations of the Government to the fullest extent practicable."

The reorganizations provided for in this plan make necessary the appointment and compensation of new officers, as specified in Section 102(c) of the plan. The rates of compensation fixed for these officers are comparable to those fixed for other officers in the Executive Branch who have similar responsibilities.

While this plan will result in a modest increase in direct expenditures, its strengthening of the Executive Office of the President will bring significant indirect savings, and at the same time will help ensure that people actually receive the return they deserve for every dollar the Government spends. The savings will result from the improved efficiency these changes will provide throughout the Executive Branch—and also from curtailing the waste that results when programs simply fail to achieve their objectives. It is not practical, however, to itemize or aggregate these indirect expenditure reductions which will result from the reorganization.

I expect to follow with other reorganization plans, quite possibly including ones that will affect other activities of the Executive Office of the President. Our studies are continuing. But this by itself is a reorganization of major significance, and a key to the more effective functioning of the entire Executive Branch.

These changes would provide an improved system of policy making and coordination, a strengthened capacity to perform those functions that are now the central concerns of the Bureau of the Budget, and a more effective set of management tools for the performance of other functions that have been rapidly increasing in importance.

The reorganization will not only improve the staff resources available to the President, but will also strengthen the advisory roles of those members of the Cabinet principally concerned with domestic affairs. By providing a means of formulation integrated and systematic recommendations on major domestic policy issues, the plan serves not only the needs of the President but also the interests of the Congress.

This reorganization plan is of major importance to the functioning of modern government. The national interest requires it. I urge that the Congress allow it to become effective.

RICHARD NIXON.

THE WHITE HOUSE, March 12, 1970.

12. 7 U.S.C. 1736a

Director of OMB is a member of an advisory committee to the President with respect to foreign agricultural sales and assistance programs.

§ 1736a. Advisory committee; establishment; composition; general policies' survey; advisement of President; meetings; order of precedence

There is hereby established an Advisory Committee composed of the Secretary of State, the Secretary of the Treasury, the Secretary of Agriculture, the Director of the Office of Management and Budget, the Director of the United States International Development Cooperation Agency, the chairman and the ranking minority member of both the House Committee on Agriculture and the House Committee on Foreign Affairs, and the chairman and the ranking minority member of both the Senate Committee on Agriculture, Nutrition, and Forestry and the Senate Committee on Foreign Relations, or their designees (who shall be members of such committees or, in the case of members from the executive branch, who shall have been confirmed by the Senate). The Advisory Committee shall survey the general policies relating to the administration of this chapter, including the manner of implementing the self-help provisions, the uses to be made of foreign currencies which accrue in connection with sales for foreign currencies under subchapter II of this chapter, the amount of currencies to be reserved in sales agreements for loans to private industry under section 1704(e) of this title, rates of exchange, interest rates, and the terms under which dollar credit sales are made, and shall advise the President with respect thereto. The Advisory Committee shall meet not less than four times during each calendar year at the call of the Acting Chairman of such Committee who shall preside in the following order: The chairman of the House Committee on Agriculture, the chairman of the Senate Committee on Foreign Relations, the chairman of the Senate Committee on Agriculture, Nutrition, and Forestry, and the chairman of the House Committee on Foreign Affairs.

(July 10, 1954, ch. 469, title IV, § 407, as added Nov. 11, 1966, Pub. L. 89-808, § 2(E), 80 Stat. 1537, and amended July 29, 1968, Pub. L. 90-436, § 8, 82 Stat. 451; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Dec. 20, 1975, Pub. L. 94-161, title II, § 210, 89 Stat. 854; S. Res. 4, Feb. 4, 1977; 1979 Reorg. Plan No. 2, § 6(a)(2), eff. Oct. 1, 1979, 44 F.R. 41165, 93 Stat. 1378.)

13. 7 U.S.C. 2235

OMB approves expenditures from a working capital fund established in the Department of Agriculture.

§ 2235. Working capital fund established; use of central services by bureaus, etc., of the Department

A working capital fund of $400,000 is established without fiscal year limitation, for the payment of salaries and other expenses necessary to the maintenance and operation of (1) central duplicating, photographic, and tabulating services, (2) a central motor-transport service for the maintenance, repair, and operation of motor-transport vehicles and other equipment, (3) a central supply service for the purchase, storage, handling, issuance, packing, or shipping of stationery, supplies, equipment, blank forms, and miscellaneous materials, for which stocks thereof, not to exceed $200,000 in value (except for the value of blank forms) at the close of any fiscal year, may be maintained sufficient to meet, in whole or in part, requirements of the bureaus and offices of the Department in the city of Washington and elsewhere, and (4) such other services as the Secretary, with the approval of the Director of the Office of Management and Budget, determines may be performed more advantageously as central services; said fund to be credited with advances or reimbursements from applicable funds of bureaus, offices, and agencies for which services are performed on the basis of rates which shall include estimated or actual charges for personal services, materials, equipment (including maintenance, repairs, and depreciation) and other expenses: *Provided*, That such advances shall not be available for any period beyond that provided by the Act appropriating the funds: *Provided further*, That such central services shall, to the fullest extent practicable, be used to make unnecessary the maintenance of separate like services in the bureaus, offices, and agencies of the department.

(July 12, 1943, ch. 215, § 1, 57 Stat. 393; Aug. 4, 1965, Pub. L. 89-106, § 7, 79 Stat. 432; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

14. 10 U.S.C. 2401(e), (f)

The Director of OMB and the Secretary of the Treasury issue guidelines as to the use of lease and charter arrangements for aircraft and vessels for any military department and evaluate and report to Congress on such arrangements.

§ 2401. Requirement for authorization by law of certain contracts relating to vessels and aircraft

(a)(1) The Secretary of a military department may make a contract for the lease of a vessel or aircraft or for the provision of a service through use by a contractor of a vessel or aircraft only as provided in subsection (b) if—

(A) the contract will be a long-term lease or charter; or

(B) the terms of the contract provide for a substantial termination liability on the part of the United States.

* * *

(e)(1) Whenever a request is submitted to Congress for the authorization of the long-term lease or charter of aircraft or naval vessels or for the authorization of a lease or charter of aircraft or naval vessels which provides for a substantial termination liability on the part of the United States, the Secretary of Defense shall submit with that request an analysis of the cost to the United States (including lost tax revenues) of any such lease or charter arrangement compared with the cost to the United States of direct procurement of the aircraft or naval vessels by the United States.

(2) Any such analysis shall be reviewed and evaluated by the Director of the Office of Management and Budget and the Secretary of the Treasury within 30 days after the date on which the request and analysis are submitted to Congress. The Director and Secretary shall conduct such review and evaluation on the basis of the guidelines issued pursuant to subsection (f) and shall report to Congress in writing on the results of their review and evaluation at the earliest practicable date, but in no event more than 45 days after the date on which the request and analysis are submitted to the Congress.

(3) Whenever a request is submitted to Congress for the authorization of funds for the Department of Defense for the long-term lease or charter of aircraft or naval vessels authorized under this section, the Secretary of Defense—

(A) shall indicate in the request what portion of the requested funds is attributable to capital-hire; and

(B) shall reflect such portion in the appropriate procurement account in the request.

(f) The Director of the Office of Management and Budget and the Secretary of the Treasury shall jointly issue guidelines for determining under what circumstances the Department of Defense may use lease or charter arrangements for aircraft and naval vessels rather than directly procuring such aircraft and vessels.

(Added Pub. L. 98-94, title XII, § 1202(a)(1), Sept. 24, 1983, 97 Stat. 679, and amended Pub. L. 98-525, title XII, § 1232(a), Oct. 19, 1984, 98 Stat. 2600.)

15. 10 U.S.C. 2685

OMB must approve use of commissary surcharge proceeds for specified purposes.

§ 2685. Adjustment of or surcharge on selling prices in commissary stores to provide funds for construction and improvement of commissary store facilities

(a) Notwithstanding any other provision of law, the Secretary of a military department, under regulations established by him and approved by the Secretary of Defense, may, for the purposes of this section, provide for an adjustment of, or surcharge on, sales prices of goods and services sold in commissary store facilities.

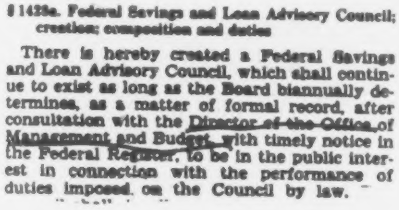
(b) The Secretary of a military department, under regulations established by him and approved by the Secretary of Defense, may use the proceeds from the adjustments or surcharges authorized by subsection (a) to acquire, construct, convert, expand, install, or otherwise improve commissary store facilities at defense installations and for related environmental evaluation and construction costs, including surveys, administration, overhead, planning, and design.

(c) The Secretary of a military department, with the approval of the Secretary of Defense and the Director of the Office of Management and Budget, may obligate anticipated proceeds from the adjustments or surcharges authorized by subsection (a) for any use specified in subsection (b), without regard to fiscal year limitations, if the Secretary of the military department determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in subsection (b).

(Added Pub. L. 93-552, title VI, § 611, Dec. 27, 1974, 88 Stat. 1765, and amended Pub. L. 95-82, title VI, § 614, Aug. 1, 1977, 91 Stat. 380; Pub. L. 97-321, title VIII, § 804, Oct. 15, 1982, 96 Stat. 1572.)

16. 12 U.S.C. 1428a

Federal Savings and Loan Advisory Council may continue in existence indefinitely subject to biannual consultation with OMB to determine if its continuation is in the public interest.

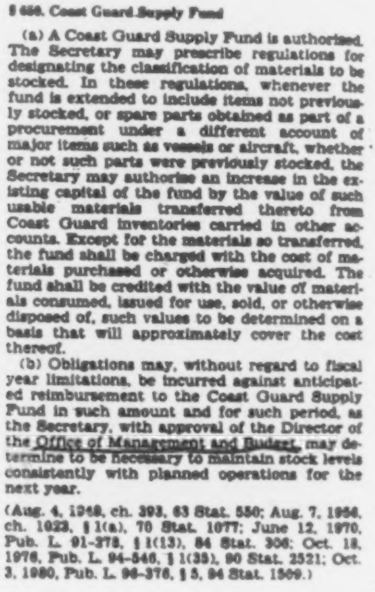


§ 1428a. Federal Savings and Loan Advisory Council; creation; composition and duties

There is hereby created a Federal Savings and Loan Advisory Council, which shall continue to exist as long as the Board biannually determines, as a matter of formal record, after consultation with the Director of the Office of Management and Budget, with timely notice in the Federal Register, to be in the public interest in connection with the performance of duties imposed on the Council by law.

17. 14 U.S.C. 650

Coast Guard Supply Fund may make obligations against anticipated reimbursements without fiscal year limitations with OMB approval.



§ 650. Coast Guard Supply Fund

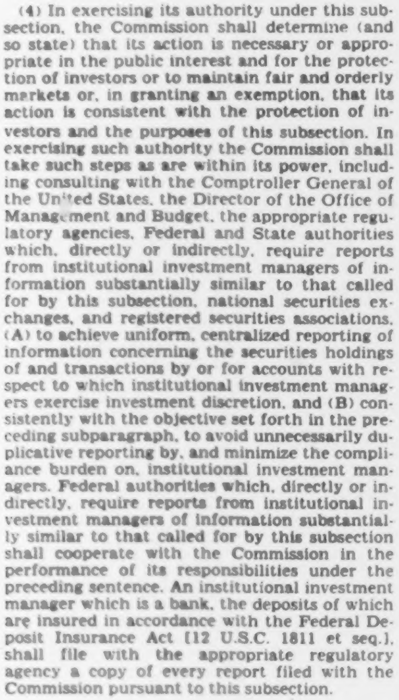
(a) A Coast Guard Supply Fund is authorized. The Secretary may prescribe regulations for designating the classification of materials to be stocked. In these regulations, whenever the fund is extended to include items not previously stocked, or spare parts obtained as part of a procurement under a different account of major items such as vessels or aircraft, whether or not such parts were previously stocked, the Secretary may authorize an increase in the existing capital of the fund by the value of such usable materials transferred thereto from Coast Guard inventories carried in other accounts. Except for the materials so transferred, the fund shall be charged with the cost of materials purchased or otherwise acquired. The fund shall be credited with the value of materials consumed, issued for use, sold, or otherwise disposed of, such values to be determined on a basis that will approximately cover the cost thereof.

(b) Obligations may, without regard to fiscal year limitations, be incurred against anticipated reimbursement to the Coast Guard Supply Fund in such amount and for such period, as the Secretary, with approval of the Director of the Office of Management and Budget, may determine to be necessary to maintain stock levels consistently with planned operations for the next year.

(Aug. 4, 1949, ch. 393, 63 Stat. 550; Aug. 7, 1956, ch. 1023, § 1(a), 70 Stat. 1077; June 12, 1970, Pub. L. 91-278, § 1(13), 84 Stat. 306; Oct. 18, 1976, Pub. L. 94-546, § 1(35), 90 Stat. 2521; Oct. 3, 1980, Pub. L. 96-376, § 5, 94 Stat. 1509.)

18. 15 U.S.C. 78m(f)(4)

Securities and Exchange Commission shall consult with OMB, among others, to assure that reports required of institutional investment managers are not duplicative or burdensome and that centralized reporting is provided for.



(4) In exercising its authority under this subsection, the Commission shall determine (and so state) that its action is necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets or, in granting an exemption, that its action is consistent with the protection of investors and the purposes of this subsection. In exercising such authority the Commission shall take such steps as are within its power, including consulting with the Comptroller General of the United States, the Director of the Office of Management and Budget, the appropriate regulatory agencies, Federal and State authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by this subsection, national securities exchanges, and registered securities associations, (A) to achieve uniform, centralized reporting of information concerning the securities holdings of and transactions by or for accounts with respect to which institutional investment managers exercise investment discretion, and (B) consistently with the objective set forth in the preceding subparagraph, to avoid unnecessarily duplicative reporting by, and minimize the compliance burden on, institutional investment managers. Federal authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by this subsection shall cooperate with the Commission in the performance of its responsibilities under the preceding sentence. An institutional investment manager which is a bank, the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], shall file with the appropriate regulatory agency a copy of every report filed with the Commission pursuant to this subsection.

19. 15 U.S.C. 1521

OMB approves expenditures from working capital fund established in the Department of Commerce.

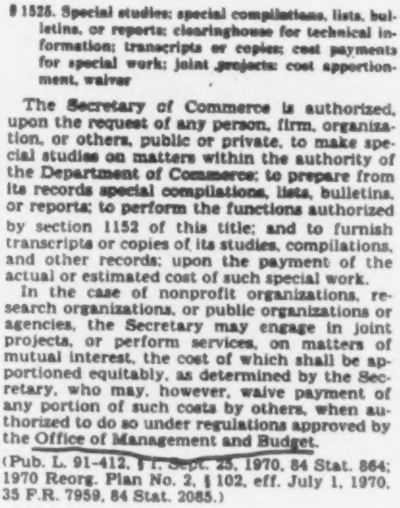
§ 1521. Working capital fund: establishment: amount: uses: reimbursement

There is established a working capital fund of $100,000, without fiscal year limitation, for the payment of salaries and other expenses necessary to the maintenance and operation of (1) central duplicating, photographic, drafting, and photostating services and (2) such other services as the Secretary, with the approval of the Director of the Office of Management and Budget, determines may be performed more advantageously as central services; said fund to be reimbursed from applicable funds of bureaus, offices, and agencies for which services are performed on the basis of rates which shall include estimated or actual charges for personal services, materials, equipment (including maintenance, repairs, and depreciation) and other expenses: *Provided*, That such central services shall, to the fullest extent practicable, be used to make unnecessary the maintenance of separate like services in the bureaus, offices, and agencies of the Department: *Provided further*, That a separate schedule of expenditures and reimbursements, and a statement of the current assets and liabilities of the working capital fund as of the close of the last completed fiscal year, shall be included in the annual Budget.

(June 28, 1944, ch. 294, title III, § 1, 58 Stat. 415; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

20. 15 U.S.C. 1525

The Department of Commerce may waive proportionate costs of joint projects to non-profit organizations, research organizations or public organizations and agencies with OMB approval.



§ 1525. Special studies; special compilations, lists, bulletins, or reports; clearinghouse for technical information; transcripts or copies; cost payments for special work; joint projects; cost apportionment, waiver

The Secretary of Commerce is authorized, upon the request of any person, firm, organization, or others, public or private, to make special studies on matters within the authority of the Department of Commerce; to prepare from its records special compilations, lists, bulletins, or reports; to perform the functions authorized by section 1152 of this title; and to furnish transcripts or copies of its studies, compilations, and other records; upon the payment of the actual or estimated cost of such special work.

In the case of nonprofit organizations, research organizations, or public organizations or agencies, the Secretary may engage in joint projects, or perform services, on matters of mutual interest, the cost of which shall be apportioned equitably, as determined by the Secretary, who may, however, waive payment of any portion of such costs by others, when authorized to do so under regulations approved by the Office of Management and Budget.

(Pub. L. 91-412, § 1, Sept. 25, 1970, 84 Stat. 864; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

21. 15 U.S.C. 2904(g)

All agencies participating in National Climate program must submit appropriations requests to OMB which shall review and treat them as a unified, multiagency request.

(g) Budgeting

Each Federal agency and department participating in the Program, shall prepare and submit to the Office of Management and Budget, on or before the date of submission of departmental requests for appropriations to the Office of Management and Budget, an annual request for appropriations for the Program for the subsequent fiscal year. The Office of Management and Budget shall review the request for appropriations as an integrated, coherent, multiagency request.

(Pub. L. 95-367, § 5(a)–(g)(1), Sept. 17, 1978, 92 Stat. 601.)

22. 15 U.S.C. 4109(b)

All agencies participating in the Arctic Research program must submit research requests to OMB which reviews them as one integrated, coherent multiagency request, and allocates necessary funds.

§ 4109. Coordination and review of budget requests; Office of Science and Technology Policy; Office of Management and Budget

(a) The Office of Science and Technology Policy shall—

(1) review all agency and department budget requests related to the Arctic transmitted pursuant to section 4107(a)(5) of this title, in accordance with the national Arctic research policy and the 5-year program under section 4107(a)(2) and section 4108 of this title, respectively; and

(2) consult closely with the Interagency Committee and the Commission to guide the Office of Science and Technology Policy's efforts.

(b)(1) The Office of Management and Budget shall consider all Federal agency requests for research related to the Arctic as one integrated, coherent, and multiagency request which shall be reviewed by the Office of Management and Budget prior to submission of the President's annual budget request for its adherence to the Plan. The Commission shall, after submission of the President's annual budget request, review the request and report to Congress on adherence to the Plan.

(2) The Office of Management and Budget shall seek to facilitate planning for the design, procurement, maintenance, deployment, and operations of icebreakers needed to provide a platform for Arctic research by allocating all funds necessary to support icebreaking operations, except for recurring incremental costs associated with specific projects, to the Coast Guard.

(Pub. L. 98-373, title I, § 110, July 31, 1984, 98 Stat. 1248.)

23. 16 U.S.C. 199dd(d)

Grants made by the National Park System Visitor Facilities Fund must be in accordance with OMB Circular A-110 (Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations).

(d) Responsibilities of Foundation

The Foundation shall carry out projects under this subchapter, and expend grants made available under this subchapter, in accordance with applicable provisions of law and regulations. All grants for any projects to be carried out under this subchapter, shall be in accordance with Circular A-110 published by the Office of Management and Budget applicable to Federal grants. The Foundation shall be responsible for managing the construction activities, including the selection of persons to perform architectural, engineering, construction, and related services.

24. 16 U.S.C. 284c(c)(1)

Grants or loans to the Wolf Trap Farm Foundation must be made in accordance with OMB circulars applicable to grants to non-profit organizations.

(c) Written agreement

No grants or loans may be made under this section unless the Secretary has entered into a written agreement with the Foundation under which the Foundation agrees—

(1) to expend all funds for the reconstruction of the Center (and for construction or reconstruction of any related structures or fixtures) only in accordance with circulars published by the Office of Management and Budget applicable to Federal grants to nonprofit organizations, and in accordance with the provisions of the Davis-Bacon Act (40 U.S.C. 276a-a7);

25. 16 U.S.C. 742e

OMB determines which functions primarily relating to the development, advancement, management, conservation, and protection of commercial fisheries are to be transferred from the Secretaries of Agriculture and Commerce, or any other agency head, to the Secretary of Interior.

§ 742e. Transfer of functions to Secretary

(a) Functions of Secretaries of Agriculture, Commerce, etc.

There shall be transferred to the Secretary all functions of the Secretary of Agriculture, the Secretary of Commerce, and the head of any other department or agency, as determined by the Director of the Office of Management and Budget to relate primarily to the development, advancement, management, conservation, and protection of commercial fisheries; but nothing in this section shall be construed to modify the authority of the Department of State or the Secretary of State to negotiate or enter into any international agreements, or conventions with respect to the development, management, or protection of any fisheries and wildlife resources or with respect to international commissions operating under conventions to which the United States is a party.

26. 16 U.S.C. 3506

OMB annually certifies to the House of Representatives agency compliance with the provisions of the Coastal Barriers Resources Act.

§ 3506. Certification of compliance

The Director of the Office of Management and Budget shall, on behalf of each Federal agency concerned, make written certification that each such agency has complied with the provisions of this chapter during each fiscal year beginning after September 30, 1982. Such certification shall be submitted on an annual basis to the House of Representatives and the Senate pursuant to the schedule required under the Congressional Budget and Impoundment Control Act of 1974.

(Pub. L. 97-348, § 7, Oct. 18, 1982, 96 Stat. 1657.)

27. 18 U.S.C. 4124

The Director of OMB is a member of a panel that arbitrates disputes as to price, quality, character, or suitability of prison-made products purchased by Federal agencies.

§ 4124. Purchase of prison-made products by Federal departments

The several Federal departments and agencies and all other Government institutions of the United States shall purchase at not to exceed current market prices, such products of the industries authorized by this chapter as meet their requirements and may be available.

Disputes as to the price, quality, character, or suitability of such products shall be arbitrated by a board consisting of the Comptroller General of the United States, the Administrator of General Services, and the Director of the Bureau of the Budget, or their representatives. Their decision shall be final and binding upon all parties.

(June 25, 1948, ch. 645, 62 Stat. 851; Oct. 31, 1951, ch. 655, § 32, 65 Stat. 723.)

28. 20 U.S.C. 1221-3(a)(1)(B), (a)(3)(B)

OMB representatives are members of Federal Education Acquisition Council which advises and reviews policies of the Secretary of Education with respect to improvement, development, and coordination of Federal education information and data acquisition activities. OMB veto under Paperwork Reduction Act is expressly preserved.

§ 1221-3. Control of paperwork

(a) Coordination of activities; Federal Education Data Acquisition Council; procedures

* * *

(B) There is hereby established a Federal Education Data Acquisition Council, to consist of members appointed by the Secretary who shall represent the public and the major agencies which collect and use education data, including one representative each of the Office of Management and Budget and of the Office of Federal Statistical Policy and Standards. The members representing the public may be appointed for not more than three years. The Council shall advise and assist the Secretary with respect to the improvement, development, and coordination of Federal education information and data acquisition activities, and shall review the policies, practices, and procedures established by the Secretary. The Council shall meet regularly during the year and shall be headed by an individual from an agency which has expertise in data collection but which undertakes no major data collection of education data.

* * *

(B) No collection of information or data acquisition activity subject to such procedures shall be subject to any other review, coordination, or approval procedure outside of the relevant Federal agency, except as required by this subsection and by the Director of the Office of Management and Budget under the rules and regulations established pursuant to chapter 35 of title 44. If a requirement for information is submitted pursuant to this chapter for review, the timetable for the Director's approval established in section 3507 of the Paperwork Reduction Act of 1980 [44 U.S.C. 3507] shall commence on the date the request is submitted, and no independent submission to the Director shall be required under such Act [44 U.S.C. 3501 et seq.].

29. 20 U.S.C. 1221e(K)(3)

OMB reviews appropriateness of recommendations of the Assessment Policy Committee.

> (3) The Assessment Policy Committee established by paragraph (2) shall be responsible for the design of the National Assessment, including the selection of the learning areas to be assessed, the development and selection of goal statements and assessment items, the assessment methodology, the form and content of the reporting and dissemination of assessment results, and studies to evaluate and improve the form and utilization of the National Assessment. The appropriateness of all cognitive, background, and attitude items developed as part of the National Assessment shall be the responsibility of the Assessment Policy Committee. Such items shall be subject to review by the Department of Education and the Office of Management and Budget for a single period of not more than 60 days.

30. 20 U.S.C. 3424(d)

The Director of OMB may designate a staff member to attend meetings of the Federal Interagency Committee on Education.

§ 3424. Federal Interagency Committee on Education

* * *

(d) Designation of additional persons to attend meetings

The Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, the Director of the Office of Science and Technology Policy, and the Executive Director of the Domestic Policy Staff may each designate a staff member to attend meetings of the Committee.

31. 20 U.S.C. 3483

With the approval of the Director of OMB a working capital fund is to be established in the Department of Education.

§ 3483. Working capital fund

(a) Establishment; administrative services included

The Secretary, with the approval of the Director of the Office of Management and Budget, is authorized to establish for the Department a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as the Secretary shall find to be desirable in the interests of economy and efficiency, including such services as—

(1) a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its components;

(2) central messenger, mail, telephone, and other communications services;

(3) office space, central services for document reproduction, and for graphics and visual aids; and

(4) a central library service.

(b) Capital; reimbursement of funds; credit; miscellaneous receipts; transfers

The capital of the fund shall consist of any appropriations made for the purpose of providing working capital and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Department, or from other sources, for supplies and services at rates that will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the Treasury as miscellaneous receipts any surplus of the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain such fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which the Secretary determines, with the approval of the Director of the Office of Management and Budget, will be performed.

(Pub. L. 96-88, title IV, § 423, Oct. 17, 1979, 93 Stat. 687.)

32. 21 U.S.C. 1202

Director of OMB is a member of the National Drug Enforcement Policy Board responsible for coordinating government policy with respect to national and international drug law enforcement.

§ 1202. National Drug Enforcement Policy Board; establishment; composition

There is established in the executive branch of the Government a Board to be known as the "National Drug Enforcement Policy Board" (hereinafter in this Act referred to as the "Board"). There shall be at the head of the Board a chairman who shall be the Attorney General (hereinafter in this Act referred to as the "Chairman"). In addition to the Chairman, the Board shall be comprised of the Secretaries of State, Treasury, Defense, Transportation, Health and Human Services, the Director of the Office of Management and Budget, and the Director of Central Intelligence and such other officials as may be appointed by the President. Decisions made by the Board pursuant to section 4(a) of this Act shall be acknowledged by each member thereof in writing.

(Oct. 12, 1984, P. L. 98-473, Title II, Ch XIII, § 1303, 98 Stat. 2168.)

§ 1203. Responsibilities and functions of National Drug Enforcement Policy Board

(a) Coordination of operations and policy

The Board shall facilitate coordination of United States operations and policy on illegal drug law enforcement. In the furtherance of that responsibility, the Board shall have the responsibility, and is authorised to—

(1) review, evaluate and develop United States Government policy, strategy an resources with respect to illegal drug law enforcement efforts, including budgetary priorities and a National and International Drug Law Enforcement Strategy;

(2) facilitate coordination of all United States Government efforts to halt national and international trafficking in illegal drugs; and

(3) coordinate the collection and evaluation of information necessary to implement United States policy with respect to illegal drug law enforcement.

32. 22 U.S.C. 2124a(b)

Director of OMB or his designee is a member of the Tourism Policy Council which coordinates policies, programs, and national heritage resources involving Federal agencies.

§ 2124a. Tourism Policy Council

(a) Establishment

In order to assure that the national interest in tourism is fully considered in Federal decisionmaking, there is established an interagency coordinating council to be known as the Tourism Policy Council (hereinafter in this section referred to as the "Council").

(b) Membership; expenses; alternates

(1) The Council shall consist of—

* * *

(C) the Director of the Office of Management and Budget or the individual designated by the Director from the Office;

33. 22 U.S.C. 2194(c)

Director of OMB allocates foreign currencies for loans by the Overseas Private Investment Corporation.

> (c) Direct investment
>
> To make loans in United States dollars repayable in dollars or loans in foreign currencies (including, without regard to section 1306 of title 31, such foreign currencies which the Secretary of the Treasury may determine to be excess to the normal requirements of the United States and the Director of the Office of Management and Budget may allocate) to firms privately owned or of mixed private and public ownership upon such terms and conditions as the Corporation may determine.
>
> . . .

34. 22 U.S.C. 2576(b)

The Director of the U.S. Arms Control and Disarmament Agency makes assessments and analyses as to the impact of legislative and budgetary proposals by Federal agencies on arms control and disarmament policies and submits recommendations to OMB, the National Security Council, and the proposing agency.

(b) Program assessment, analysis and recommendations by Director to National Security Council, Office of Management and Budget, and proposing agency; requests for authorization or appropriation; contents; information requested by select Congressional committees

(1) The Director, as he deems appropriate, shall assess and analyze each program described in subsection (a) of this section with respect to its impact on arms control and disarmament policy and negotiations, and shall advise and make recommendations, on the basis of such assessment and analysis, to the National Security Council, the Office of Management and Budget, and the Government agency proposing such program.

35. 22 U.S.C. 2679

OMB approves maximum per diem rates proposed by the Secretary of State for foreign participants in exchange programs.

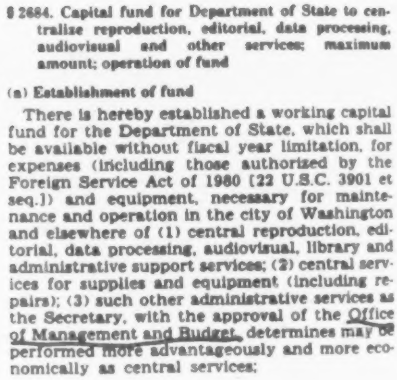
§ 2679. Maximum rates of per diem in lieu of subsistence payable to foreign participants in exchange of persons program or in program of furnishing technical information and assistance

The Secretary of State, with the approval of the Office of Management and Budget, shall prescribe the maximum rates of per diem in lieu of subsistence (or of similar allowances therefor) payable while away from their own countries to foreign participants in any exchange of persons program, or in any program of furnishing technical information and assistance, under the jurisdiction of any Government agency, and said rates may be fixed without regard to any provision of law in limitation thereof.

(Aug. 1, 1956, ch. 841, title I, § 12, 70 Stat. 892; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; renumbered Aug. 24, 1982, Pub. L. 97-241, title II, § 202(a), 96 Stat. 282.)

36. 22 U.S.C. 2684(a)

OMB approval is required for certain expenditures from the Department of State working capital fund.



§ 2684. Capital fund for Department of State to centralize reproduction, editorial, data processing, audiovisual and other services; maximum amount; operation of fund

(a) Establishment of fund

There is hereby established a working capital fund for the Department of State, which shall be available without fiscal year limitation, for expenses (including those authorized by the Foreign Service Act of 1980 [22 U.S.C. 3901 et seq.]) and equipment, necessary for maintenance and operation in the city of Washington and elsewhere of (1) central reproduction, editorial, data processing, audiovisual, library and administrative support services; (2) central services for supplies and equipment (including repairs); (3) such other administrative services as the Secretary, with the approval of the Office of Management and Budget, determines may be performed more advantageously and more economically as central services;

37. 22 U.S.C. 2695

OMB must approve consolidation of administrative services common to the Department of State and one or more agencies performing foreign affairs functions.

§ 2695. Agreements for consolidation of administrative services

Whenever the head of any Federal agency performing any foreign affairs functions (including, but not limited to, the Department of State, the United States Information Agency, the Agency for International Development, and the Arms Control and Disarmament Agency) determines that administrative services performed in common by the Department of State and one or more other such agencies may be performed more advantageously and more economically on a consolidated basis, the Secretary of State and the heads of the other agencies concerned may, subject to the approval of the Director of the Office of Management and Budget, conclude an agreement which provides for the transfer to and consolidation within the Department or within one of the other agencies concerned of so much of the functions, personnel, property, records, and funds of the Department and of the other agencies concerned as may be necessary to enable the performance of those administrative services on a consolidated basis for the benefit of all agencies concerned. Agreements for consolidation of administrative services under this section shall provide for reimbursement or advances of funds from the agency receiving the service to the agency performing the service in amounts which will approximate the expense of providing administrative services for the serviced agency.

(Aug. 1, 1956, ch. 841, title I, § 23, as added Oct. 7, 1978, Pub. L. 95-426, title I, § 111(a), 92 Stat. 967; renumbered and amended Aug. 24, 1982, Pub. L. 97-241, title II, § 202(a), title III, § 303(b), 96 Stat. 282, 291.)

38. 22 U.S.C. 2877

OMB approves for obligation and expenditure appropriations necessary to cover adverse currency fluctuations for Radio Free Europe.

§ 2877. Authorization of appropriations; fluctuations in foreign currency exchange rates affecting budgeted level of operation of RFE/RL, Incorporated

(a)(1) There are authorized to be appropriated to carry out the purposes of this chapter—

(A) $86,519,000 for the fiscal year 1982 and $98,317,000 for the fiscal year 1983; and

(B) such additional amounts for any fiscal year as may be necessary for increases in salary, pay, retirement, and other employee benefits authorized by law.

(2) In order to maintain the level of operations authorized under paragraph (1) for RFE/RL, Incorporated, there are authorized to be appropriated such additional amounts as may be necessary for any fiscal year to offset adverse fluctuations in foreign currency exchange rates, or overseas wage and price changes, occurring after November 30 of the earlier of (A) the calendar year which ended during the fiscal year preceding such fiscal year, or (B) the calendar year which preceded the calendar year during which the authorization of appropriations for such fiscal year was enacted. Amounts appropriated under this paragraph shall be available for obligation and expenditure only to the extent that the Director of the Office of Management and Budget determines (and so certifies to the Congress) is necessary, because of such fluctuations or such changes, in order to maintain the level of operation authorized under paragraph (1) for RFE/RL, Incorporated.

(3) Amounts appropriated under this subsection are authorized to be made available until expended.

(b) The Director of the Office of Management and Budget shall place in reserve and inform the Congress of any amount appropriated under this section which, because of upward fluctuations in foreign currency exchange rates, is in excess of the amount necessary to maintain the budgeted level of operation for RFE/RL, Incorporated.

(Pub. L. 93-129, § 8, Oct. 19, 1973, 87 Stat. 460; Pub. L. 93-392, Aug. 28, 1974, 88 Stat. 781; Pub. L. 94-104, § 1, Oct. 6, 1975, 89 Stat. 508; Pub. L. 94-350, title III, § 301, July 12, 1976, 90 Stat. 832; Pub. L. 95-105, title III, § 301, Aug. 17, 1977, 91 Stat. 851; Pub. L. 95-426, title III, §§ 301(a), 302, 306, Oct. 7, 1978, 92 Stat. 975, 976; Pub. L. 96-60, title III, § 302, Aug. 15, 1979, 93 Stat. 402; Pub. L. 97-241, title I, § 112(c), title IV, § 402, Aug. 24, 1982, 96 Stat. 278, 296.)

39. 22 U.S.C. 3930

A representative of OMB is a member of the Board of the Foreign Service which advises the Secretary of State with respect to maximum capatability between foreign service and other personnel systems.

§ 3930. Board of Foreign Service

The President shall establish a Board of the Foreign Service to advise the Secretary of State on matters relating to the Service, including furtherance of the objectives of maximum compatibility among agencies authorized by law to utilize the Foreign Service personnel system and compatibility between the Foreign Service personnel system and the other personnel systems of the Government. The Board of the Foreign Service shall be chaired by a career member of the Senior Foreign Service designated by the Secretary of State and shall include one or more representatives of the Department of State, the United States Information Agency, the United States International Development Cooperation Agency, the Department of Agriculture, the Department of Commerce, the Department of Labor, the Office of Personnel Management, the Office of Management and Budget, the Equal Employment Opportunity Commission, and such other agencies as the President may designate.

(Pub. L. 96-465, title I, § 210, Oct. 17, 1980, 94 Stat. 2082; Pub. L. 97-241, title III, § 303(b), Aug. 24, 1982, 96 Stat. 291.)

40. 22 U.S.C. 4608(a)

OMB retains authority to review and comment on Institute of Peace's budget requests to Congress.

§ 4608. Independence and limitations

(a) Nothing in this title [22 USCS §§ 4601 et seq.] may be construed as limiting the authority of the Office of Management and Budget to review and submit comments on the Institute's budget request at the time it is transmitted to the Congress.

. . .

41. 24 U.S.C. 168a

OMB sets per diem rate for reimbursement by Federal agencies to St. Elizabeth's Hospital.

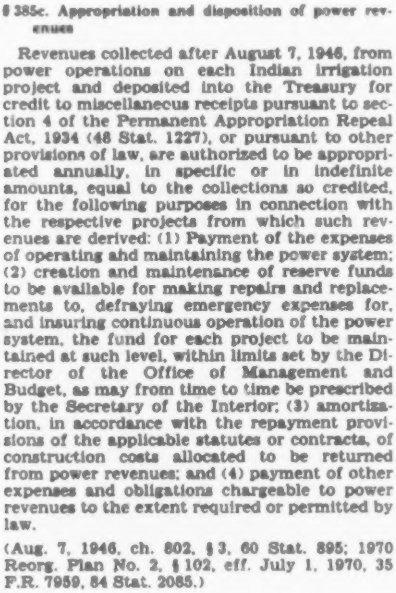
§ 168a. Payment by executive departments for care of patients for whom responsible

Any executive department of the Federal Government (including any agency, independent establishment, or wholly owned instrumentality thereof, and including the District of Columbia) requiring Saint Elizabeths Hospital to care for patients for whom such department is responsible, shall, except to the extent that the expense of such care is authorized to be paid from appropriations to the hospital for the care of patients, pay by check to Saint Elizabeths Hospital, upon the Superintendent's request, either in advance or by way of reimbursement at the end of each calendar month or calendar quarter, such amounts as the Superintendent calculates to be due for such care on the basis of a per diem rate approved by the Office of Management and Budget. Bills rendered by the Superintendent on the basis of such calculations shall not be subject to audit or certification in advance of payment; but proper adjustment of amounts which have been paid in advance on the basis of such calculations shall be made monthly or quarterly, as may be agreed upon by the Superintendent of the hospital and the executive department concerned.

(Aug. 4, 1947, ch. 478, § 2, 61 Stat. 751; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

42. 25 U.S.C. 385c

OMB sets limits for reserve funds created to provide for maintenance, repair, replacement, and continuous operation of power systems on Indian irrigation projects.



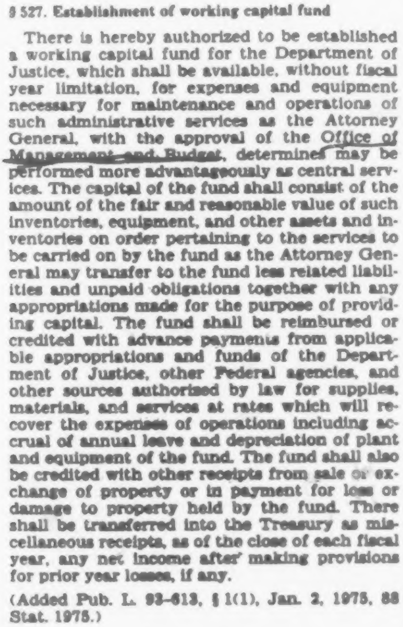
§ 385c. Appropriation and disposition of power revenues

Revenues collected after August 7, 1946, from power operations on each Indian irrigation project and deposited into the Treasury for credit to miscellaneous receipts pursuant to section 4 of the Permanent Appropriation Repeal Act, 1934 (48 Stat. 1227), or pursuant to other provisions of law, are authorized to be appropriated annually, in specific or in indefinite amounts, equal to the collections so credited, for the following purposes in connection with the respective projects from which such revenues are derived: (1) Payment of the expenses of operating and maintaining the power system; (2) creation and maintenance of reserve funds to be available for making repairs and replacements to, defraying emergency expenses for, and insuring continuous operation of the power system, the fund for each project to be maintained at such level, within limits set by the Director of the Office of Management and Budget, as may from time to time be prescribed by the Secretary of the Interior; (3) amortization, in accordance with the repayment provisions of the applicable statutes or contracts, of construction costs allocated to be returned from power revenues; and (4) payment of other expenses and obligations chargeable to power revenues to the extent required or permitted by law.

(Aug. 7, 1946, ch. 802, § 3, 60 Stat. 895; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

43. 28 U.S.C. 527

OMB approves expenditures by the Attorney General from the Department of Justice working capital fund.



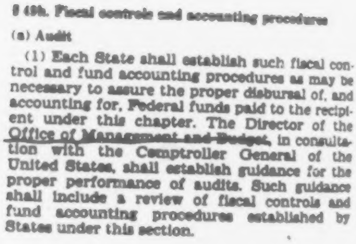
§ 527. Establishment of working capital fund

There is hereby authorized to be established a working capital fund for the Department of Justice, which shall be available, without fiscal year limitation, for expenses and equipment necessary for maintenance and operations of such administrative services as the Attorney General, with the approval of the Office of Management and Budget, determines may be performed more advantageously as central services. The capital of the fund shall consist of the amount of the fair and reasonable value of such inventories, equipment, and other assets and inventories on order pertaining to the services to be carried on by the fund as the Attorney General may transfer to the fund less related liabilities and unpaid obligations together with any appropriations made for the purpose of providing capital. The fund shall be reimbursed or credited with advance payments from applicable appropriations and funds of the Department of Justice, other Federal agencies, and other sources authorized by law for supplies, materials, and services at rates which will recover the expenses of operations including accrual of annual leave and depreciation of plant and equipment of the fund. The fund shall also be credited with other receipts from sale or exchange of property or in payment for loss or damage to property held by the fund. There shall be transferred into the Treasury as miscellaneous receipts, as of the close of each fiscal year, any net income after making provisions for prior year losses, if any.

(Added Pub. L. 93-613, § 1(1), Jan. 2, 1975, 88 Stat. 1975.)

44. 29 U.S.C. 49h(1)

OMB establishes audit guidelines for states participating in the United States Employment Service program.



§ 49h. Fiscal controls and accounting procedures

(a) Audit

(1) Each State shall establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of, and accounting for, Federal funds paid to the recipient under this chapter. The Director of the Office of Management and Budget, in consultation with the Comptroller General of the United States, shall establish guidance for the proper performance of audits. Such guidance shall include a review of fiscal controls and fund accounting procedures established by States under this section.

45. 29 U.S.C. 1574

OMB establishes audit guidelines for states participating in job training and employment assistance programs and may waive such requirements.

§ 1574. Fiscal controls; sanctions

(a) Establishment of State controls; independent audit and exemption; Federal audit standards

(1) Each State shall establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of, and accounting for, Federal funds paid to the recipient under subchapters II and III of this chapter. The Director of the Office of Management and Budget, in consultation with the Comptroller General of the United States, shall establish guidance for the proper performance of audits. Such guidance shall include a review of fiscal controls and fund accounting procedures established by States under this section.

(2) At least once every two years, the State shall prepare or have prepared an independent financial and compliance audit of each recipient of funds under subchapters II and III of this chapter. Under criteria established by the Director of the Office of Management and Budget, and upon application by the Governor, the Secretary may exempt designated recipients from all or part of the requirements of this section, except that any such exemption shall not apply to the State administering agency, the entity which is the administrative entity for the job training plan for a service delivery area, or a private industry council. Any exemption under this section may be withdrawn by the Secretary in consultation with the Director of the Office of Management and Budget.

(3) Each audit shall be conducted in accordance with applicable auditing standards set forth in the financial and compliance element of the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions issued by the Comptroller General of the United States.

46. 29 U.S.C. 1753(a), (c)

The Director of OMB, with the Secretaries of Labor, Defense, Treasury and Education, through the National Occupational Information Coordinating Committee, reviews and coordinates national data systems related to labor market information in order to improve such systems. OMB is to assure that sufficient funds for staffing are provided.

§ 1753. Special Federal responsibilities

(a) Interdepartmental cooperation; review and coordination of national data systems; standardized national definitions; aid for State labor and occupational opportunity information systems

The Secretary, in cooperation with the Secretary of Commerce, the Secretary of Defense, the Secretary of the Treasury, the Secretary of Education, and the Director of the Office of Management and Budget, through the National Occupational Information Coordinating Committee established under section 161(b) of the Vocational Education Act of 1963 [20 U.S.C. 2391(b)], shall—

(1) review the need for and the application of all operating national data collection and processing systems related to labor market information in order to identify gaps, overlap, and duplications, and integrate at the national level currently available data sources in order to improve the management of information systems;

(2) maintain, assure timely review, and implement national standardized definitions with respect to terms, geographic areas, timing of collection, and coding measures related to labor market information, to the maximum extent feasible; and

(3) provide technical assistance to the States in the development, maintenance, and utilization of labor market/occupational supply and demand information systems and projections of supply and demand as described in section 1535 of this title, with special emphasis on assistance in the utilization of cost-efficient automated systems and improving access of individuals to career opportunities information in local and State labor markets.

* * *

(c) Sufficient funds for Federal level coordinating staff

The Secretary and the Director of the Office of Management and Budget shall assure that, from the funds reserved for this part, sufficient funds are available to provide staff at the Federal level to assure the coordination functions described in this section.

(Pub. L. 97-300, title IV, § 463, Oct. 13, 1982, 96 Stat. 1384; Pub. L. 97-404, § 4(d), Dec. 31, 1982, 96 Stat. 2027.)

47. 31 U.S.C. 322(a)

OMB approves expenditures from the Department of Treasury's working capital fund.

§ 322. Working capital fund

(a) The Department of the Treasury has a working capital fund. Amounts in the fund are available for expenses of operating and maintaining common administrative services of the Department that the Secretary of the Treasury, with the approval of the Director of the Office of Management and Budget, decides may be carried out more advantageously and more economically as central services. Amounts in the fund may total not more than $1,000,000 at any time.

48. 31 U.S.C. 501-504, 521-522

Codification of establishment of OMB and its principal organizational components. See also Reorganization Plan No. 2 of 1970 and Executive Order 11,541.

CHAPTER 5—OFFICE OF MANAGEMENT AND BUDGET

SUBCHAPTER I—ORGANIZATION

Sec.
501. Office of Management and Budget.
502. Officers.
503. Office of Information and Regulatory Affairs.
504. Office of Federal Procurement Policy.

SUBCHAPTER II—ADMINISTRATIVE

521. Employees.
522. Necessary expenditures.

AMENDMENTS

1983—Pub. L. 97-452, § 1(1)(B), Jan. 12, 1983, 96 Stat. 2477, added item 504.

SUBCHAPTER I—ORGANIZATION

§ 501. Office of Management and Budget

The Office of Management and Budget is an office in the Executive Office of the President.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 886.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
501	31:16(1st sentence).	June 10, 1921, ch. 18, § 207(1st sentence), 42 Stat. 22; Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085; restated Mar. 2, 1974, Pub. L. 93-250, § 1, 88 Stat. 11.

§ 502. Officers

(a) The head of the Office of Management and Budget is the Director of the Office of Management and Budget. The Director is appointed by the President, by and with the advice and consent of the Senate. Under the direction of the President, the Director shall administer the Office.

(b) The Office has a Deputy Director of the Office of Management and Budget, appointed by the President, by and with the advice and consent of the Senate. The Deputy Director—

(1) shall carry out the duties and powers prescribed by the Director; and

(2) acts as the Director when the Director is absent or unable to serve or when the office of Director is vacant.

(c) The Office has 3 Assistant Directors who shall carry out the duties and powers prescribed by the Director.

(d) The Office may have not more than 6 additional officers, each of whom is appointed in the competitive service by the Director, with the approval of the President. Each additional officer shall carry out the duties and powers prescribed by the Director. The Director shall specify the title of each additional officer.

(e) When the Director and Deputy Director are absent or unable to serve or when the offices of Director and Deputy Director are vacant, the President may designate an officer of the Office to act as Director.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 886.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
502(a)	31:16(2d sentence related to Director).	June 10, 1921, ch. 18, § 207(2d, 3d sentences), 42 Stat. 22; Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; July 31, 1953, ch. 302, § 101(1st proviso in par. under heading "Bureau of the Budget"), 67 Stat. 299; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), (b), (d), (e), (f)(less words between parentheses), 84 Stat. 2085; Mar. 2, 1974, Pub. L. 93-250, § 1, 88 Stat. 11.
502(b)	31:16(2d sentence related to Deputy Director, 3d sentence).	
502(c)	31:16a.	Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; July 31, 1953, ch. 302, § 101(last proviso in par. under heading "Bureau of the Budget"), 67 Stat. 299; Sept. 6, 1966, Pub. L. 89-554, § 8(a), 80 Stat. 657; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(b), (e), 84 Stat. 2086.
	31:16c.	Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; Aug. 1, 1956, ch. 838, 70 Stat. 807; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(b), (e), 84 Stat. 2086.
502(d), (e).	31:16(note).	Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(c)(words before last comma), (e), (f)(words between parentheses), 84 Stat. 2086.

CROSS REFERENCES

Compensation of Director and Deputy Director of Office of Management and Budget, see sections 5313 and 5314 of Title 5, Government Organization and Employees.

Compensation of Assistant Directors of Office of Management and Budget, see section 5315 of Title 5.

§ 503. Office of Information and Regulatory Affairs

The Office of Information and Regulatory Affairs, established under section 3503 of title 44, is an office in the Office of Management and Budget.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 886.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
503	(no source).	

The section is included to provide in subchapter I of chapter 5 of the revised title a complete list of the organizational units established by law that are in the Office of Management and Budget or are subject to the direction and supervision of the Director of the Office of Management and Budget.

§ 504. Office of Federal Procurement Policy

The Office of Federal Procurement Policy, established under section 5(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 404(a)), is an office in the Office of Management and Budget.

(Added Pub. L. 97-452, § 1(1)(A), Jan. 12, 1983, 96 Stat. 2467.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
504	(no source).	

The section is included to provide in subchapter I of chapter 5 of title 31 a complete list of the organizational units established by law that are in the Office of Management and Budget or are subject to the direction and supervision of the Director of the Office of Management and Budget.

SUBCHAPTER II—ADMINISTRATIVE

§ 521. Employees

The Director of the Office of Management and Budget shall appoint and fix the pay of employees of the Office under regulations prescribed by the President.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 886.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
521	31:17(a)(related to employees).	June 10, 1921, ch. 18, § 209(a)(related to employees), 42 Stat. 22; Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.

The words "attorneys and other" are omitted as being included in "employees".

§ 522. Necessary expenditures

The Director of the Office of Management and Budget may make necessary expenditures for the Office under regulations prescribed by the President.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 886.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
522	31:17(a)(related to expenses).	June 10, 1921, ch. 18, § 209(a)(related to expenses), 42 Stat. 22; Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.

49. 31 U.S.C. 1101-1114

Establishes budget and appropriations authority of the President. The President delegated his operational functions under these provisions to OMB through Executive Order 11,541. OMB has implemented this authority by the issuance of directives to agencies in the form of circulars and supplemental bulletins. See, e.g., Circular No. A-10, "Responsibilities for Disclosure with Respect to the Budget," which provides guidelines for agency confidentiality and disclosure to Congress and the public with respect to the annual budget and related documents, and Circular No. A-11, "Preparation and Submission of Budget Estimates," which provides instructions for agency preparation and submission to OMB of annual budget proposals. See also, Circular A-19, "Legislative Coordination and Clearance," which outlines procedures for the coordination and clearance by OMB of agency recommendations (including testimony) on proposed, pending and enrolled legislation.

CHAPTER 11—THE BUDGET AND FISCAL, BUDGET, AND PROGRAM INFORMATION

Sec.
1101. Definitions.
1102. Fiscal year.
1103. Budget ceiling.
1104. Budget and appropriations authority of the President.
1105. Budget contents and submission to Congress.
1106. Supplemental budget estimates and changes.
1107. Deficiency and supplemental appropriations.
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1109. Current programs and activities estimates.
1110. Year-ahead requests for authorizing legislation.
1111. Improving economy and efficiency.
1112. Fiscal, budget, and program information.
1113. Congressional information.
1114. Budget information on consulting services.

§ 1101. Definitions

In this chapter—

(1) "agency" includes the District of Columbia government but does not include the legislative branch or the Supreme Court.

(2) "appropriations" means appropriated amounts and includes, in appropriate context—

(A) funds;

(B) authority to make obligations by contract before appropriations; and

(C) other authority making amounts available for obligation or expenditure.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 907.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1101(1)	31:2(1st-4th pars.).	June 10, 1921, ch. 18, § 2(1st-5th pars.), 42 Stat. 20; Apr. 3, 1939, ch. 36, § 201, 53 Stat. 565; July 31, 1953, ch. 302, § 101(1st proviso in par. under heading "Bureau of the Budget"), 67 Stat. 299.
1101(2)	31:2(last par.).	June 10, 1921, ch. 18, 42 Stat. 20, § 2(last par.); added Sept. 12, 1950, ch. 946, § 101, 64 Stat. 832.

§ 1102. Fiscal year

The fiscal year of the Treasury begins on October 1 of each year and ends on September 30 of the following year. Accounts of receipts and expenditures required under law to be published each year shall be published for the fiscal year.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 908.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1102	31:1020.	R.S. § 237; Oct. 1, 1890, ch. 1256, § 9, 26 Stat. 646; restated July 12, 1974, Pub. L. 93-344, § 501, 88 Stat. 321.

§ 1104. Budget and appropriations authority of the President

(a) The President shall prepare budgets of the United States Government under section 1105 of this title and proposed deficiency and supplemental appropriations under section 1107 of this title. To the extent practicable, the President shall use uniform terms in stating the purposes and conditions of appropriations.

(b) Except as provided in this chapter, the President shall prescribe the contents and order of statements in the budget on expenditures and estimated expenditures and statements on proposed appropriations and information submitted with the budget and proposed appropriations. The President shall include with the budget and proposed appropriations information on personnel and other objects of expenditure in the way that information was included in the budget for fiscal year 1950. However, the requirement that information be included in the budget in that way may be waived or changed by joint action of the Committees on Appropriations of both Houses of Congress. This subsection does not limit the authority of a committee of Congress to request information in a form it prescribes.

(c) When the President makes a basic change in the form of the budget, the President shall submit with the budget information showing where items in the budget for the prior fiscal year are contained in the present budget. However, the President may change the functional categories in the budget only in consultation with the Committees on Appropriations and on the Budget of both Houses of Congress.

(d) The President shall develop programs and prescribe regulations to improve the compilation, analysis, publication, and dissemination of statistical information by executive agencies. The President shall carry out this subsection through the Administrator for the Office of Information and Regulatory Affairs in the Office of Management and Budget.

(e) Under regulations prescribed by the President, each agency shall provide information required by the President in carrying out this chapter. The President has access to, and may inspect, records of an agency to obtain information.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 908.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1104(a)	31:16(last sentence related to preparation of budgets and appropriations).	June 10, 1921, ch. 18, § 207(last sentence related to preparation of budgets and appropriations), 42 Stat. 22; restated Sept. 12, 1950, ch. 946, § 102(e), 64 Stat. 833; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
	31:623.	June 23, 1913, ch. 3, § 3, 38 Stat. 78; Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
1104(b)	31:581.	June 10, 1921, ch. 18, § 204, 42 Stat. 21; restated Sept. 12, 1950, ch. 946, § 102(c), 64 Stat. 833.
1104(c)	31:11d.	July 12, 1974, Pub. L. 93-344, § 602, 88 Stat. 330.
	31:581a.	June 10, 1921, ch. 18, § 208, 42 Stat. 21; restated Sept. 12, 1950, ch. 946, § 102(d), 64 Stat. 833.
1104(d)	31:18b.	Sept. 12, 1950, ch. 946, § 103, 64 Stat. 834; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
	44:3503(note).	Dec. 11, 1980, Pub. L. 96-511, § 3(a), 94 Stat. 2825.
1104(e)	31:21.	June 10, 1921, ch. 18, § 213, 42 Stat. 23; Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.

§ 1105. Budget contents and submission to Congress

(a) During the first 15 days of each regular session of Congress, the President shall submit a budget of the United States Government for the following fiscal year. Each budget shall include a budget message and summary and supporting information. The President shall include in each budget the following:

(1) information on activities and functions of the Government.

(2) when practicable, information on costs and achievements of Government programs.

(3) other desirable classifications of information.

(4) a reconciliation of the summary information on expenditures with proposed appropriations.

(5) except as provided in subsection (b) of this section, estimated expenditures and proposed appropriations the President decides are necessary to support the Government in the fiscal year for which the budget is submitted and the 4 fiscal years after that year.

(6) estimated receipts of the Government in the fiscal year for which the budget is submitted and the 4 fiscal years after that year under—

(A) laws in effect when the budget is submitted; and

(B) proposals in the budget to increase revenues.

(7) appropriations, expenditures, and receipts of the Government in the prior fiscal year.

(8) estimated expenditures and receipts, and appropriations and proposed appropriations, of the Government for the current fiscal year.

(9) balanced statements of the—

(A) condition of the Treasury at the end of the prior fiscal year;

(B) estimated condition of the Treasury at the end of the current fiscal year; and

(C) estimated condition of the Treasury at the end of the fiscal year for which the budget is submitted if financial proposals in the budget are adopted.

(10) essential information about the debt of the Government.

(11) other financial information the President decides is desirable to explain in practicable detail the financial condition of the Government.

(12) for each proposal in the budget for legislation that would establish or expand a Government activity or function, a table showing—

(A) the amount proposed in the budget for appropriation and for expenditure because of the proposal in the fiscal year for which the budget is submitted; and

(B) the estimated appropriation required because of the proposal for each of the 4 fiscal years after that year that the proposal will be in effect.

(13) an allowance for additional estimated expenditures and proposed appropriations for the fiscal year for which the budget is submitted.

(14) an allowance for unanticipated uncontrollable expenditures for that year.

(15) a separate statement on each of the items referred to in section 301(a)(1)–(5) of the Congressional Budget Act of 1974 (2 U.S.C. 632(a)(1)–(5)).

(16) the level of tax expenditures under existing law in the tax expenditures budget (as defined in section 3(a)(3) of the Congressional Budget Act of 1974 (2 U.S.C. 622(a)(3)) for the fiscal year for which the budget is submitted, considering projected economic factors and changes in the existing levels based on proposals in the budget.

(17) information on estimates of appropriations for the fiscal year following the fiscal year for which the budget is submitted for grants, contracts, and other payments under each program for which there is an authorization of appropriations for that following fiscal year when the appropriations are authorized to be included in an appropriation law for the fiscal year before the fiscal year in which the appropriation is to be available for obligation.

(18) a comparison of the total amount of budget outlays for the prior fiscal year, estimated in the budget submitted for that year,

for each major program having relatively uncontrollable outlays with the total amount of outlays for that program in that year.

(19) a comparison of the total amount of receipts for the prior fiscal year, estimated in the budget submitted for that year, with receipts received in that year, and for each major source of receipts, a comparison of the amount of receipts estimated in that budget with the amount of receipts from that source in that year.

(20) an analysis and explanation of the differences between each amount compared under clauses (18) and (19) of this subsection.

(21) a horizontal budget showing—

(A) the programs for meteorology and of the National Climate Program established under section 5 of the National Climate Program Act (15 U.S.C. 2904);

(B) specific aspects of the program of, and appropriations for, each agency; and

(C) estimated goals and financial requirements.

(22) a statement of budget authority, proposed budget authority, budget outlays, and proposed budget outlays, and descriptive information in terms of—

(A) a detailed structure of national needs that refers to the missions and programs of agencies (as defined in section 101 of this title); and

(B) the missions and basic programs.

(23) separate appropriation accounts for appropriations under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.).

(24) recommendations on the return of Government capital to the Treasury by a mixed-ownership corporation (as defined in section 9101(2) of this title) that the President decides are desirable.

(25) a separate statement, for each agency having an Office of Inspector General, of the amount of the appropriation requested for the Office.

(b) Estimated expenditures and proposed appropriations for the legislative branch and the judicial branch to be included in each budget under subsection (a)(5) of this section shall be submitted to the President before October 16 of each year and included in the budget by the President without change.

(c) The President shall recommend in the budget appropriate action to meet an estimated deficiency when the estimated receipts for the fiscal year for which the budget is submitted (under laws in effect when the budget is submitted) and the estimated amounts in the Treasury at the end of the current fiscal year available for expenditure in the fiscal year for which the budget is submitted, are less than the estimated expenditures for that year. The President shall make recommendations required by the public interest when the estimated receipts and estimated amounts in the Treasury are more than the estimated expenditures.

(d) When the President submits a budget or supporting information about a budget, the President shall include a statement on all changes about the current fiscal year that were made before the budget or information was submitted.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 908; Pub. L. 97-452, § 1(2), Jan. 12, 1983, 96 Stat. 2467.)

HISTORICAL AND REVISION NOTES

1982 ACT

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1105(a)(1)-(14)	31:11(a)(less (5)(words after 3d comma)).	June 10, 1921, ch. 18, § 201(a), 42 Stat. 20; restated Sept. 12, 1950, ch. 946, § 102(a), 64 Stat. 832; Aug. 1, 1956, ch. 814, § 1(a), 70 Stat. 782; Oct. 26, 1970, Pub. L. 91-510, § 221(a), 84 Stat. 1169; July 12, 1974, Pub. L. 93-344, §§ 603, 604, 88 Stat. 324.
	31:18	June 10, 1921, ch. 18, § 211, 42 Stat. 22; Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
1105(a)(15)	31:11(d)	June 10, 1921, ch. 18, 42 Stat. 20, § 201(d)-(f), (g)(last sentence)-(i)(1st sentence); added July 12, 1974, Pub. L. 93-344, § 601, 88 Stat. 323.
1105(a)(16).	31:11(e).	
1105(a)(17).	31:11(h).	
1105(a)(18)-(20).	31:11(f).	
1105(a)(21).	31:28	Oct. 18, 1962, Pub. L. 87-843, § 304(1st par.), 76 Stat. 1097; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085; Sept. 17, 1978, Pub. L. 95-367, § 5(g)(2), 92 Stat. 603.
1105(a)(22).	31:11(i)(1st sentence).	
1105(a)(23).	31:11(note).	Nov. 9, 1977, Pub. L. 95-164, § 306, 91 Stat. 1322.
1105(a)(24).	31:850.	Dec. 6, 1945, ch. 557, § 204, 59 Stat. 601.
1105(b)	[illegible]:605(last par.). 31:11(a)(5)(words after 3d comma).	
1105(c)	31:13.	June 10, 1921, ch. 18, § 202, 42 Stat. 21.
1105(d)	31:11(g)(last sentence).	

1983 ACT

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1105(a)(25).	31 App.:11(k)(1).	June 10, 1921, ch. 18, 42 Stat. 20, § 201(k)(1); added Sept. 8, 1982, Pub. L. 97-255, § 1, 96 Stat. 813.

§ 1106. Supplemental budget estimates and changes

(a) Before July 16 of each year, the President shall submit to Congress a supplemental summary of the budget for the fiscal year for which the budget is submitted under section 1105(a) of this title. The summary shall include—

(1) for that fiscal year—

(A) substantial changes in or reappraisals of estimates of expenditures and receipts;

(B) substantial obligations imposed on the budget after its submission;

(C) current information on matters referred to in section 1105(a)(8) and (9)(B) and (C) of this title; and

(D) additional information the President decides is advisable to provide Congress with complete and current information about the budget and current estimates of the functions, obligations, requirements, and financial condition of the United States Government;

(2) for the 4 fiscal years following the fiscal year for which the budget is submitted, information on estimated expenditures for programs authorized to continue in future years, or that are considered mandatory, under law; and

(3) for future fiscal years, information on estimated expenditures of balances carried over from the fiscal year for which the budget is submitted.

(b) Before April 11 and July 16 of each year, the President shall submit to Congress a statement of changes in budget authority requested, estimated budget outlays, and estimated receipts for the fiscal year for which the budget is submitted (including prior changes proposed for the executive branch of the Government) that the President decides are necessary and appropriate based on current information. The statement shall include the effect of those changes on the information submitted under section 1105(a)(1)-(14) and (b) of this title and shall include supporting information as practicable. The statement submitted before July 16 may be included in the information submitted under subsection (a)(1) of this section.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 911.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1106(a)	31:11(b), (c).	June 10, 1921, ch. 18, 42 Stat. 20, § 201(b), (c); added Aug. 25, 1958, Pub. L. 85-759, § 1, 72 Stat. 852; restated Oct. 26, 1970, Pub. L. 91-510, § 221(b), 84 Stat. 1169; July 12, 1974, Pub. L. 93-344, § 602, 88 Stat. 324.
1106(b)	31:11(g)(1st-3d sentences).	June 10, 1921, ch. 18, 42 Stat. 20, § 201(g)(1st-3d sentences); added July 12, 1974, Pub. L. 93-344, § 601, 88 Stat. 323.

§ 1107. Deficiency and supplemental appropriations

The President may submit to Congress proposed deficiency and supplemental appropriations the President decides are necessary because of laws enacted after the submission of the budget or that are in the public interest. The President shall include the reasons for the submission of the proposed appropriations and the reasons the proposed appropriations were not included in the budget. When the total proposed appropriations would have required the President to make a recommendation under section 1105(c) of this title if they had been included in the budget, the President shall make a recommendation under that section.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 911.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1107	31:14.	June 10, 1921, ch. 18, § 203, 42 Stat. 21; restated Sept. 12, 1950, ch. 946, § 102(b), 64 Stat. 833.

§ 1108. Preparation and submission of appropriations requests to the President

(a) In this section (except subsections (b)(1) and (e)), "agency" means a department, agency, or instrumentality of the United States Government.

(b)(1) The head of each agency shall prepare and submit to the President each appropriation request for the agency. The request shall be prepared and submitted in the form prescribed by the President under this chapter and by the date established by the President. When the head of an agency does not submit a request by that date, the President shall prepare the request for the agency to be included in the budget or changes in the budget or as deficiency and supplemental appropriations. The President may change agency appropriation requests. Agency appropriation requests shall be developed from cost-based budgets in the way and at times prescribed by the President. The head of the agency shall use the cost-based budget to administer the agency and to divide appropriations or amounts.

(2) An officer or employee of an agency in the executive branch may submit to the President or Congress a request for legislation authorizing deficiency or supplemental appropriations for the agency only with the approval of the head of the agency.

(c) The head of an agency shall include with an appropriation request submitted to the President a report that the statement of obligations submitted with the request contains obligations consistent with section 1501 of this title. The head of the agency shall support the report with a certification of the consistency and shall support the certification with records showing that the amounts have been obligated. The head of the agency shall designate officials to make the certifications, and those officials may not delegate the duty to make the certifications. The certifications and records shall be kept in the agency—

(1) in a form that makes audits and reconciliations easy; and

(2) for a period necessary to carry out audits and reconciliations.

(d) To the extent practicable, the head of an agency shall—

(1) provide information supporting the agency's budget request for its missions by function and subfunction (including the mission of each organizational unit of the agency); and

(2) relate the agency's programs to its missions.

(e) Except as provided in subsection (f) of this section, an officer or employee of an agency (as defined in section 1101 of this title) may submit to Congress or a committee of Congress an appropriations estimate or request, a request for an increase in that estimate or request, or a recommendation on meeting the financial needs of the Government only when requested by either House of Congress.

(f) The Interstate Commerce Commission shall submit to Congress copies of budget estimates, requests, and information (including personnel needs), legislative recommendations, prepared testimony for congressional hearings, and comments on legislation at the same time they are sent to the President or the Office of Management and Budget. An officer of an agency may not impose conditions on or impair communication by the Commission with Congress, or a committee or member of Congress, about the information.

(g) Amounts available under law are available for field examinations of appropriation estimates. The use of the amounts is subject only to regulations prescribed by the appropriate standing committees of Congress.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 912.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1108(a)	(no source).	
1108(b)(1)	31:16(last sentence related to appropriations requests).	June 10, 1921, ch. 18, § 207(last sentence related to appropriations requests), 42 Stat. 22; restated Sept. 12, 1950, ch. 946, § 102(e), 64 Stat. 833; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
	31:22, 23.	June 10, 1921, ch. 18, §§ 214, 215, 42 Stat. 23; restated Sept. 12, 1950, ch. 946, § 102(f), (g), 64 Stat. 833; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
	31:24(a).	June 10, 1921, ch. 18, § 216(a), 42 Stat. 23; restated Sept. 12, 1950, ch. 946, § 102(h), 64 Stat. 834; Aug. 1, 1956, ch. 814, § 1(b), 70 Stat. 782; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
	31:24(b), (c).	June 10, 1921, ch. 18, 42 Stat. 20, § 216(b), (c); added Aug. 1, 1956, ch. 814, § 1(b), 70 Stat. 782.
1108(b)(2)	31:581b.	Sept. 12, 1950, ch. 946, § 201, 64 Stat. 832; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
1108(c)	31:200(b).	Aug. 26, 1954, ch. 935, § 1311(b), 68 Stat. 830; restated July 8, 1959, Pub. L. 86-79, § 210(a), 73 Stat. 167; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
	31:200(c).	Aug. 26, 1954, ch. 935, § 1311(c), 68 Stat. 831.
1108(d)	31:11(i)(last sentence).	June 10, 1921, ch. 18, 42 Stat. 20, § 201(i)(last sentence); added July 12, 1974, Pub. L. 93-344, § 601, 88 Stat. 323.
1108(e)	31:15.	June 10, 1921, ch. 18, § 206, 42 Stat. 21.
1108(f)	31:11(j).	June 10, 1921, ch. 18, 42 Stat. 20, § 201(j); added Feb. 5, 1976, Pub. L. 94-210, § 311, 90 Stat. 60.
1108(g)	31:22a.	Aug. 7, 1953, ch. 340, § 1314, 67 Stat. 438.

§ 1109. Current programs and activities estimates

(a) Before November 11 of each year, the President shall submit to both Houses of Congress the estimated budget outlays and proposed budget authority that would be included in the budget for the following fiscal year if programs and activities of the United States Government were carried on during that year at the same level as the current fiscal year without a change in policy. The President shall state the estimated budget outlays and proposed budget authority by function and subfunction under the classifications in the budget summary table under the heading "Budget Authority and Outlays by Function and Agency", by major programs in each function, and by agency. The President also shall include a statement of the economic and program assumptions on which those budget outlays and budget authority are based, including inflation, real economic growth, and unemployment rates, program caseloads, and pay increases.

(b) The Joint Economic Committee shall review the estimated budget outlays and proposed budget authority and submit an economic evaluation of the budget outlays and budget authority to the Committees on the Budget of both Houses before January 1 of each year.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 913.)

Historical and Revision Notes

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1109(a)	31:11a(a).	July 12, 1974, Pub. L. 93-344, § 605, 88 Stat. 325.
1109(b)	31:11a(b).	

§ 1111. Improving economy and efficiency

To improve economy and efficiency in the United States Government, the President shall—

(1) make a study of each agency to decide, and may send Congress recommendations, on changes that should be made in—

(A) the organization, activities, and business methods of agencies;

(B) agency appropriations;

(C) the assignment of particular activities to particular services; and

(D) regrouping of services; and

(2) evaluate and develop improved plans for the organization, coordination, and management of the executive branch of the Government.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 913.)

Historical and Revision Notes

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1111	31:18.	June 10, 1921, ch. 18, § 209, 42 Stat. 22; Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.

§ 1110. Year-ahead requests for authorizing legislation

A request to enact legislation authorizing new budget authority to continue a program or activity for a fiscal year shall be submitted to Congress before May 16 of the year before the year in which the fiscal year begins. If a new program or activity will continue for more than one year, the request must be submitted for at least the first and 2d fiscal years.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 913.)

Historical and Revision Notes

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1110	31:11a.	July 12, 1974, Pub. L. 93-344, § 607, 88 Stat. 326.
	31:18a.	Sept. 12, 1950, ch. 946, § 104, 64 Stat. 834; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.

§ 1112. Fiscal, budget, and program information

(a) In this section, "agency" means a department, agency, or instrumentality of the United States Government except a mixed-ownership Government corporation.

(b) In cooperation with the Comptroller General, the Secretary of the Treasury and the Director of the Office of Management and Budget shall establish and maintain standard data processing and information systems for fiscal, budget, and program information for use by agencies to meet the needs of the Government, and to the extent practicable, of State and local governments.

(c) The Comptroller General—

(1) in cooperation with the Secretary, the Director of the Office of Management and Budget, and the Director of the Congressional Budget Office, shall establish, maintain, and publish standard terms and classifications for fiscal, budget, and program information of the Government, including information on fiscal policy, receipts, expenditures, programs, projects, activities, and functions;

(2) when advisable, shall report to Congress on those terms and classifications, and recommend legislation necessary to promote the establishment, maintenance, and use of standard terms and classifications by the executive branch of the Government; and

(3) in carrying out this subsection, shall give particular consideration to the needs of the Committees on Appropriations and on the Budget of both Houses of Congress, the Committee on Ways and Means of the House, the Committee on Finance of the Senate, and the Congressional Budget Office.

(d) Agencies shall use the standard terms and classifications published under subsection (c)(1) of this section in providing fiscal, budget, and program information to Congress.

(e) In consultation with the President, the head of each executive agency shall take actions necessary to achieve to the extent possible—

(1) consistency in budget and accounting classifications;

(2) synchronization between those classifications and organizational structure; and

(3) information by organizational unit on performance and program costs to support budget justifications.

(f) In cooperation with the Director of the Congressional Budget Office, the Comptroller General, and appropriate representatives of State and local governments, the Director of the Office of Management and Budget (to the extent practicable) shall provide State and local governments with fiscal, budget, and program information necessary for accurate and timely determination by those governments of the impact on their budgets of assistance of the United States Government.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 913.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1112(a)	31:1157.	Oct. 26, 1970, Pub. L. 91-510, § 207, 84 Stat. 1168.
1112(b)	31:1151.	Oct. 26, 1970, Pub. L. 91-510, §§ 201, 202(a), (b), 203(d), 84 Stat. 1167, 1168; restated July 12, 1974, Pub. L. 93-344, § 801(a), 88 Stat. 327, 328, 329.
1112(c)	31:1152(a)(1)(1st, 2d sentences), (2), (b).	
1112(d)	31:1152(a)(1)(last sentence).	
1112(e)	31:18c.	Sept. 12, 1950, ch. 946, 64 Stat. 832, § 106; added Aug. 1, 1956, ch. 814, § 2(a), 70 Stat. 782; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
1112(f)	31:1153(d).	

§ 1113. Congressional information

(a)(1) When requested by a committee of Congress having jurisdiction over receipts or appropriations, the President shall provide the committee with assistance and information.

(2) When requested by a committee of Congress, additional information related to the amount of an appropriation originally requested by an Office of Inspector General shall be submitted to the committee.

(b) When requested by a committee of Congress, by the Comptroller General, or by the Director of the Congressional Budget Office, the Secretary of the Treasury, the Director of the Office of Management and Budget, and the head of each executive agency shall—

(1) provide information on the location and kind of available fiscal, budget, and program information;

(2) to the extent practicable, prepare summary tables of that fiscal, budget, and program information and related information the committee, the Comptroller General, or the Director of the Congressional Budget Office considers necessary; and

(3) provide a program evaluation carried out or commissioned by an executive agency.

(c) In cooperation with the Director of the Congressional Budget Office, the Secretary, and the Director of the Office of Management and Budget, the Comptroller General shall—

(1) establish and maintain a current directory of sources of, and information systems for, fiscal, budget, and program information and a brief description of the contents of each source and system;

(2) when requested, provide assistance to committees of Congress and members of Congress in obtaining information from the sources in the directory; and

(3) when requested, provide assistance to committees and, to the extent practicable, to members of Congress in evaluating the information obtained from the sources in the directory.

(d) To the extent they consider necessary, the Comptroller General and the Director of the Congressional Budget Office individually or jointly shall establish and maintain a file of information to meet recurring needs of Congress for fiscal, budget, and program information to carry out this section and sections 717 and 1112 of this title. The file shall include information on budget requests, congressional authorizations to obligate and expend, apportionment and reserve actions, and obligations and expenditures. The Comptroller General and the Director shall maintain the file and an index to the file so that it is easier for the committees and agencies of Congress to use the file and index through data processing and communications techniques.

(e)(1) The Comptroller General shall—

(A) carry out a continuing program to identify the needs of committees and members of Congress for fiscal, budget, and program information to carry out this section and section 1112 of this title;

(B) assist committees of Congress in developing their information needs;

(C) monitor recurring reporting requirements of Congress and committees; and

(D) make recommendations to Congress and committees for changes and improvements in those reporting requirements to meet information needs identified by the Comptroller General, to improve their usefulness to congressional users, and to eliminate unnecessary reporting.

(2) Before September 2 of each year, the Comptroller General shall report to Congress on—

(A) the needs identified under paragraph (1)(A) of this subsection;

(B) the relationship of those needs to existing reporting requirements;

(C) the extent to which reporting by the executive branch of the United States Government currently meets the identified needs;

(D) the changes to standard classifications necessary to meet congressional needs;

(E) activities, progress, and results of the program of the Comptroller General under paragraph (1)(B)-(D) of this subsection; and

(F) progress of the executive branch in the prior year.

(3) Before March 2 of each year, the Director of the Office of Management and Budget and the Secretary shall report to Congress on plans for meeting the needs identified under paragraph (1)(A) of this subsection, including—

(A) plans for carrying out changes to classifications to meet information needs of Congress;

(B) the status of information systems in the prior year; and

(C) the use of standard classifications.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 914; Pub. L. 97-452, § 1(3), Jan. 12, 1983, 96 Stat. 2467.)

HISTORICAL AND REVISION NOTES

1982 ACT

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1113(a)	31:20.	June 10, 1921, ch. 18, § 212, 42 Stat. 23; Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
1113(b)-(d).	31:1153(a)-(c).	Oct. 26, 1970, Pub. L. 91-510, § 202(a)-(c), 84 Stat. 1168; restated July 12, 1974, Pub. L. 93-344, § 801(a), 88 Stat. 328.
1113(e)(1)	31:1153(c), (d).	Oct. 26, 1970, Pub. L. 91-510, § 202(c)-(f), 84 Stat. 1167; restated July 12, 1974, Pub. L. 93-344, § 801(a), 88 Stat. 328.
1113(e)(2)	31:1153(e).	
1113(e)(3)	31:1153(f).	

1983 ACT

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1113(e)(2)	31 App.:11(k)(2).	June 10, 1921, ch. 18, 42 Stat. 20, § 201(k)(2); added Sept. 8, 1982, Pub. L. 97-255, § 3, 96 Stat. 815.

§ 1114. Budget information on consulting services

(a) The head of each agency shall include in the budget justification for the agency submitted each year to the Committees on Appropriations of both Houses of Congress—

(1) amounts requested for consulting services;

(2) the appropriation accounts from which the amounts are to be paid; and

(3) a description of the need for the consulting services, including a list of the major programs requiring those services.

(b) The Inspector General or comparable official of each agency shall submit to Congress each year, with the budget justification for the agency, an evaluation of the progress of the agency in establishing effective management controls and improving the accuracy and completeness of the information provided to the Federal Procurement Data System on contracts for consulting services. If the agency does not have an Inspector General or comparable official, the head of the agency or officer or employee designated by the head of the agency shall submit the evaluation.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 916.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1114	31:28.	July 8, 1980, Pub. L. 96-304, § 307, 94 Stat. 928. Oct. 9, 1980, Pub. L. 96-400, § 323(b), (c), 94 Stat. 1699. Oct. 13, 1980, Pub. L. 96-436, § 126, 94 Stat. 1869. Dec. 12, 1980, Pub. L. 96-514, § 309(b), (c), 94 Stat. 2984. Dec. 15, 1980, Pub. L. 96-528, § 616, 94 Stat. 3117. Dec. 23, 1981, Pub. L. 97-102, § 318, 95 Stat. 1461.

50. 31 U.S.C. 1511-1519

Under these provisions the President has budget execution control, in particular the authority to apportion or reserve appropriated funds. The President has delegated this function to OMB under Executive Order 11,541. OMB has implemented its authority through the issuance of OMB Circular No. A-31, "Distribution of Appropriations and Other Budget Authority Made to the President," setting forth procedures for the distribution to and among Federal agencies of budget authority vested in the President, and OMB Circular No. A-34, "Instructions on Budget Execution," which provides directions on budget execution by such devices as financial plans, apportionments, deferrals, funding control, operating budgets, budget reports, etc.

SUBCHAPTER II—APPORTIONMENT

§ 1511. Definition and application

(a) In this subchapter, "appropriations" means—

(1) appropriated amounts;

(2) funds; and

(3) authority to make obligations by contract before appropriations.

(b) This subchapter does not apply to—

(1) amounts (except amounts for administrative expenses) available—

(A) for price support and surplus removal of agricultural commodities; and

(B) under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c);

(2) a corporation getting amounts to make loans (except paid in capital amounts) without legal liability on the part of the United States Government; and

(3) the Senate, the House of Representatives, a committee of Congress, a member, officer, employee, or office of either House of Congress, or the Office of the Architect of the Capitol or an officer or employee of that Office.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 928.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1511(a)	31:665(c)(1)(last sentence), (d)(2)(5th sentence).	R.S. § 3679(c)(1)(last sentence), (d)(2)(5th sentence, 6th sentence less 1st-23d words, last sentence related to price supports), (f)(2); Mar. 3, 1905, ch. 1484, § 4(1st par.), 33 Stat. 1257; Feb. 27, 1906, ch. 510, § 3, 34 Stat. 48; restated Sept. 6, 1950, ch. 896, § 1211, 64 Stat. 765, 766, 767.
1511(b)(1)	31:665(d)(2)(6th sentence less 1st-23d words).	
1511(b)(2)	31:665(d)(2)(last sentence related to price supports).	
1511(b)(3)	31:665(f)(2).	

(c)(1) In apportioning or reapportioning an appropriation, a reserve may be established only—

(A) to provide for contingencies;

(B) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or

(C) as specifically provided by law.

(2) A reserve established under this subsection may be changed as necessary to carry out the scope and objectives of the appropriation concerned. When an official designated in section 1513 of this title to make apportionments decides that an amount reserved will not be required to carry out the objectives and scope of the appropriation concerned, the official shall recommend the rescission of the amount in the way provided in chapter 11 of this title for appropriation requests. Reserves established under this section shall be reported to Congress as provided in the Impoundment Control Act of 1974 (2 U.S.C. 681 et seq.).

(d) An apportionment or a reapportionment shall be reviewed at least 4 times a year by the official designated in section 1513 of this title to make apportionments.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 929.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1512(a)	31:665(c)(1)(1st sentence), (4)(words after 1st comma).	R.S. §3679(c)(1)(1st sentence), (3), (4); Mar. 3, 1905, ch. 1484, §4(1st par.), 33 Stat. 1257; Feb. 27, 1906, ch. 510, §3, 34 Stat. 48; restated Sept. 6, 1950, ch. 896, §1211, 64 Stat. 765, 766.
1512(b)	31:665(c)(3).	
1512(c)	31:665(c)(2).	R.S. §3679(c)(2); Mar. 3, 1905, ch. 1484, §4(1st par.), 33 Stat. 1257; Feb. 27, 1906, ch. 510, §3, 34 Stat. 48; Sept. 6, 1950, ch. 896, §1211, 64 Stat. 765; restated July 12, 1974, Pub. L. 93-344, §1002, 88 Stat. 332.
1512(d)	31:665(c)(4)(words before 1st comma).	

§ 1512. Apportionment and reserves

(a) Except as provided in this subchapter, an appropriation available for obligation for a definite period shall be apportioned to prevent obligation or expenditure at a rate that would indicate a necessity for a deficiency or supplemental appropriation for the period. An appropriation for an indefinite period and authority to make obligations by contract before appropriations shall be apportioned to achieve the most effective and economical use. An apportionment may be reapportioned under this section.

(b)(1) An appropriation subject to apportionment is apportioned by—

(A) months, calendar quarters, operating seasons, or other time periods;

(B) activities, functions, projects, or objects; or

(C) a combination of the ways referred to in clauses (A) and (B) of this paragraph.

(2) The official designated in section 1513 of this title to make apportionments shall apportion an appropriation under paragraph (1) of this subsection as the official considers appropriate. Except as specified by the official, an amount apportioned is available for obligation under the terms of the appropriation on a cumulative basis unless reapportioned.

§ 1513. Officials controlling apportionments

(a) The official having administrative control of an appropriation available to the legislative branch, the judicial branch, the United States International Trade Commission, or the District of Columbia government that is required to be apportioned under section 1512 of this title shall apportion the appropriation in writing. An appropriation shall be apportioned not later than the later of the following:

(1) 30 days before the beginning of the fiscal year for which the appropriation is available; or

(2) 30 days after the date of enactment of the law by which the appropriation is made available.

(b)(1) The President shall apportion in writing an appropriation available to an executive agency (except the Commission) that is required to be apportioned under section 1512 of this title. The head of each executive agency to which the appropriation is available shall submit to the President information required for the apportionment in the form and the way and at the time specified by the President. The information shall be submitted not later than the later of the following:

(A) 40 days before the beginning of the fiscal year for which the appropriation is available; or

(B) 15 days after the date of enactment of the law by which the appropriation is made available.

(2) The President shall notify the head of the executive agency of the action taken in apportioning the appropriation under paragraph (1) of this subsection not later than the later of the following:

(A) 20 days before the beginning of the fiscal year for which the appropriation is available; or

(B) 30 days after the date of enactment of the law by which the appropriation is made available.

(c) By the first day of each fiscal year, the head of each executive department of the United States Government shall apportion among the major organizational units of the department the maximum amount to be expended by each unit during the fiscal year out of each contingent fund appropriated for the entire year for the department. Each amount may be changed during the fiscal year only by written direction of the head of the department. The direction shall state the reasons for the change.

(d) An appropriation apportioned under this subchapter may be divided and subdivided administratively within the limits of the apportionment.

(e) This section does not affect the initiation and operation of agricultural price support programs.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 930.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1513(a)	31:665(d)(1).	R.S. § 3679(d)(1), (2)(1st-4th sentences, 6th sentence 1st-22d words), (g)(1st sentence); Mar. 3, 1905, ch. 1484, § 4(1st par.), 33 Stat. 1257; Feb. 27, 1906, ch. 510, § 3, 34 Stat. 48; restated Sept. 6, 1950, ch. 896, § 1211, 64 Stat. 765, 767; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085; Jan. 3, 1975, Pub. L. 93-618, § 175(a)(2), 88 Stat. 2011.
1513(b)	31:665(d)(2)(1st-4th sentences).	
1513(c)	31:669(words before semicolon).	Aug. 23, 1912, ch. 350, § 6(words before semicolon), 37 Stat. 414.
1513(d)	31:665(g)(1st sentence).	
1513(e)	31:665(d)(2)(6th sentence 1st-22d words).	

§ 1514. Administrative division of apportionments

(a) The official having administrative control of an appropriation available to the legislative branch, the judicial branch, the United States International Trade Commission, or the District of Columbia government, and, subject to the approval of the President, the head of each executive agency (except the Commission) shall prescribe by regulation a system of administrative control not inconsistent with accounting procedures prescribed under law. The system shall be designed to—

(1) restrict obligations or expenditures from each appropriation to the amount of apportionments or reapportionments of the appropriation; and

(2) enable the official or the head of the executive agency to fix responsibility for an obligation or expenditure exceeding an apportionment or reapportionment.

(b) To have a simplified system for administratively dividing appropriations, the head of each executive agency (except the Commission) shall work toward the objective of financing each operating unit, at the highest practical level, from not more than one administrative division for each appropriation affecting the unit.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 930.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1514(a)	31:665(g)(3d sentence).	R.S. § 3679(g)(3d sentence); Mar. 3, 1905, ch. 1484, § 4(1st par.), 33 Stat. 1257; Feb. 27, 1906, ch. 510, § 3, 34 Stat. 48; restated Sept. 6, 1950, ch. 896, § 1211, 64 Stat. 767; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085; Jan. 3, 1975, Pub. L. 93-618, § 175(a)(2), 88 Stat. 2011.
1514(b)	31:665(g)(last sentence).	R.S. § 3679(g)(last sentence); added Aug. 1, 1956, ch. 814, § 3, 70 Stat. 783.

§ 1515. Authorized apportionments necessitating deficiency or supplemental appropriations

(a) An appropriation required to be apportioned under section 1512 of this title may be apportioned on a basis that indicates a necessity for a deficiency or supplemental appropriation to the extent necessary to permit payment of pay increases for prevailing rate employees whose pay is fixed and adjusted under subchapter IV of chapter 53 of title 5.

(b)(1) Except as provided in subsection (a) of this section, an official may make, and the head of an executive agency may request, an apportionment under section 1512 of this title that would indicate a necessity for a deficiency or supplemental appropriation only when the official or agency head decides that the action is required because of—

(A) a law enacted after submission to Congress of the estimates for an appropriation that requires an expenditure beyond administrative control; or

(B) an emergency involving the safety of human life, the protection of property, or the immediate welfare of individuals when an appropriation that would allow the United States Government to pay, or contribute to, amounts required to be paid to individuals in specific amounts fixed by law or under formulas prescribed by law, is insufficient.

(2) If an official making an apportionment decides that an apportionment would indicate a necessity for a deficiency or supplemental appropriation, the official shall submit immediately a detailed report of the facts to Congress. The report shall be referred to in submitting a proposed deficiency or supplemental appropriation.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 931.)

Historical and Revision Notes

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1515(a)	31:665a.	June 5, 1957, Pub. L. 85-48, §210, 71 Stat. 50.
1515(b)(1)	31:665(e)(1).	R.S. §3679(e)(1); Mar. 3, 1905, ch. 1484, §4(1st par.), 33 Stat. 1257; Feb. 27, 1906, ch. 510, §3, 34 Stat. 48; Sept. 6, 1950, ch. 896, §1211, 64 Stat. 765; restated Aug. 28, 1957, Pub. L. 85-170, §1401, 71 Stat. 440.
1515(b)(2)	31:665(e)(2).	R.S. §3679(e)(2); Mar. 3, 1905, ch. 1484, §4(1st par.), 33 Stat. 1257; Feb. 27, 1906, ch. 510, §3, 34 Stat. 48; restated Sept. 6, 1950, ch. 896, §1211, 64 Stat. 765.

§ 1516. Exemptions

An official designated in section 1513 of this title to make apportionments may exempt from apportionment—

(1) a trust fund or working fund if an expenditure from the fund has no significant effect on the financial operations of the United States Government;

(2) a working capital fund or a revolving fund established for intragovernmental operations;

(3) receipts from industrial and power operations available under law; and

(4) appropriations made specifically for—

(A) interest on, or retirement of, the public debt;

(B) payment of claims, judgments, refunds, and drawbacks;

(C) items the President decides are of a confidential nature;

(D) payment under a law requiring payment of the total amount of the appropriation to a designated payee; and

(E) grants to the States under the Social Security Act (42 U.S.C. 301 et seq.).

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 931.)

Historical and Revision Notes

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1516	31:665(f)(1).	R.S. §3679(f)(1); Mar. 3, 1905, ch. 1484, §4(1st par.), 33 Stat. 1257; Feb. 27, 1906, ch. 510, §3, 34 Stat. 48; restated Sept. 6, 1950, ch. 896, §1211, 64 Stat. 765.

§ 1517. Prohibited obligations and expenditures

(a) An officer or employee of the United States Government or of the District of Columbia government may not make or authorize an expenditure or obligation exceeding—

(1) an apportionment; or

(2) the amount permitted by regulations prescribed under section 1514(a) of this title.

(b) If an officer or employee of an executive agency or of the District of Columbia government violates subsection (a) of this section, the head of the executive agency or the Mayor of the District of Columbia, as the case may be, shall report immediately to the President and Congress all relevant facts and a statement of actions taken.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 932.)

Historical and Revision Notes

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1517(a)	31:665(h).	R.S. §3679(h), (i)(2)(related to (h)); Mar. 3, 1905, ch. 1484, §4(1st par.), 33 Stat. 1257; Feb. 27, 1906, ch. 510, §3, 34 Stat. 48; restated Sept. 6, 1950, ch. 896, §1211, 64 Stat. 765.
1517(b)	31:665(i)(2)(related to (h)).	

§ 1518. Adverse personnel actions

An officer or employee of the United States Government or of the District of Columbia government violating section 1517(a) of this title shall be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 932.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1518	31:665(i)(1)(words before semicolon related to (h)).	R.S. § 3679(i)(1)(words before semicolon related to (h)); Mar. 3, 1905, ch. 1484, § 4(1st par.), 33 Stat. 1257; Feb. 27, 1906, ch. 510, § 3, 34 Stat. 48; restated Sept. 6, 1950, ch. 896, § 1211, 64 Stat. 768.

§ 1519. Criminal penalty

An officer or employee of the United States Government or of the District of Columbia government knowingly and willfully violating section 1517(a) of this title shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 932.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1519	31:665(i)(1)(words after semicolon related to (h)).	R.S. § 3679(i)(1)(words after semicolon related to (h)); Mar. 3, 1905, ch. 1484, § 4(1st par.), 33 Stat. 1257; Feb. 27, 1906, ch. 510, § 3, 34 Stat. 48; restated Sept. 6, 1950, ch. 896, § 1211, 64 Stat. 768.

51. 31 U.S.C. 1531

When a function or activity is transferred by law within an agency or from one agency to another, the President approves the balances of appropriations necessary to continue the function or activity in its new location. The President has delegated approval authority to OMB. See Executive Order No. 11,541.

§ 1531. Transfers of functions and activities

(a) The balance of an appropriation available and necessary to finance or discharge a function or activity transferred or assigned under law within an executive agency or from one executive agency to another may be transferred to and used—

(1) by the organizational unit or agency to which the function or activity was transferred or assigned; and

(2) for a purpose for which the appropriation was originally available.

(b) The head of the executive agency determines the amount that, with the approval of the President, is necessary to be transferred when the transfer or assignment of the function or activity is within the agency. The President determines the amount necessary to be transferred when the transfer or assignment of the function or activity is from one executive agency to another.

(c) A balance transferred under this section is—

(1) credited to an applicable existing or new appropriation account;

(2) merged with the amount in an account to which the balance is credited; and

(3) with the amount with which the balance is merged, accounted for as one amount.

(d) New appropriation accounts may be established to carry out subsection (c)(1) of this section.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 932.)

52. 31 U.S.C. 1537(b)(1)(B)

Agreements to provide services between the Federal and District of Columbia governments must be approved by the OMB Director.

§ 1537. Services between the United States Government and the District of Columbia government

(a) To prevent duplication and to promote efficiency and economy, an officer or employee of—

(1) the United States Government may provide services to the District of Columbia government; and

(2) the District of Columbia government may provide services to the United States Government.

(b)(1) Services under this section shall be provided under an agreement—

(A) negotiated by officers and employees of the 2 governments; and

(B) approved by the Director of the Office of Management and Budget and the Mayor of the District of Columbia.

53. 31 U.S.C. 3512(c)(1)

The Director of OMB establishes guidelines for the evaluation of agency internal accounting and administrative control systems. See also, OMB Circular A-123, "Internal Control Systems," prescribing policies and standards for establishing, managing, and reporting on internal agency program and administrative control; and OMB Circular A-127, "Financial Management Systems."

§ 3512. Executive agency accounting systems

* * *

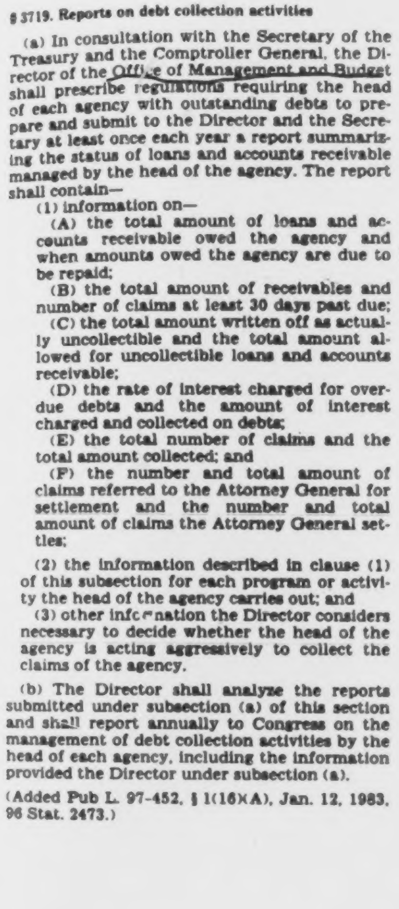
(c)(1) In consultation with the Comptroller General, the Director of the Office of Management and Budget—

(A) shall establish by December 31, 1982, guidelines that the head of each executive agency shall follow in evaluating the internal accounting and administrative control systems of the agency to decide whether the systems comply with subsection (b) of this section; and

(B) may change a guideline when considered necessary.

54. 31 U.S.C. 3719

The Director of OMB promulgates regulations requiring agency heads to report on debt collection activities.



§ 3719. Reports on debt collection activities

(a) In consultation with the Secretary of the Treasury and the Comptroller General, the Director of the Office of Management and Budget shall prescribe regulations requiring the head of each agency with outstanding debts to prepare and submit to the Director and the Secretary at least once each year a report summarizing the status of loans and accounts receivable managed by the head of the agency. The report shall contain—

(1) information on—

(A) the total amount of loans and accounts receivable owed the agency and when amounts owed the agency are due to be repaid;

(B) the total amount of receivables and number of claims at least 30 days past due;

(C) the total amount written off as actually uncollectible and the total amount allowed for uncollectible loans and accounts receivable;

(D) the rate of interest charged for overdue debts and the amount of interest charged and collected on debts;

(E) the total number of claims and the total amount collected; and

(F) the number and total amount of claims referred to the Attorney General for settlement and the number and total amount of claims the Attorney General settles;

(2) the information described in clause (1) of this subsection for each program or activity the head of the agency carries out; and

(3) other information the Director considers necessary to decide whether the head of the agency is acting aggressively to collect the claims of the agency.

(b) The Director shall analyze the reports submitted under subsection (a) of this section and shall report annually to Congress on the management of debt collection activities by the head of each agency, including the information provided the Director under subsection (a).

(Added Pub L. 97-452, § 1(16)(A), Jan. 12, 1983, 96 Stat. 2473.)

55. 31 U.S.C. 3901-3906

OMB oversees administration of Prompt Payment Act. See also, Circular No. A-125, "Prompt Payment," which prescribes the policies and procedures to be followed by executive departments and agencies in paying for property and services acquired under the Act.

CHAPTER 39—PROMPT PAYMENT

Sec.
3901. Definitions and application.
3902. Interest penalties.
3903. Regulations.
3904. Limitations on discount payments.
3905. Reports.
3906. Relationship to other laws.

§ 3901. Definitions and application

(a) In this chapter—

(1) "agency" has the same meaning given that term in section 551(1) of title 5 and includes an entity being operated, and the head of the agency identifies the entity as being operated, only as an instrumentality of the agency to carry out a program of the agency.

(2) "business concern" means—

(A) a person carrying on a trade or business; and

(B) a nonprofit entity operating as a contractor.

(3) "proper invoice" is an invoice containing or accompanied by substantiating documentation the Director of the Office of Management and Budget may require by regulation and the head of the appropriate agency may require by regulation or contract.

(4) the head of an agency is deemed to receive an invoice on the later of the dates that—

(A) the designated payment office or finance center of the agency actually receives a proper invoice; or

(B) the head of the agency accepts the applicable property or service.

(5) a payment is deemed to be made on the date a check for the payment is dated.

(6) a contract to rent property is deemed to be a contract to acquire the property.

(b) This chapter applies to the Tennessee Valley Authority. However, regulations prescribed under this chapter do not apply to the Authority, and the Authority alone is responsible for carrying out this chapter as it applies to contracts of the Authority.

(Added Pub. L. 97-452, § 1(18)(A), Jan. 12, 1983, 96 Stat. 2474.)

§ 3902. Interest penalties

(a) Under regulations prescribed under section 3903 of this title, the head of an agency acquiring property or service from a business concern, who does not pay the concern for each complete delivered item of property or service by the required payment date, shall pay an interest penalty to the concern on the amount of the payment due. The interest shall be computed at the rate the Secretary of the Treasury establishes for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611). The Secretary shall publish each rate in the Federal Register.

(b) Except as provided in section 3906 of this title, the interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made. However, a penalty may not be paid if payment for the item is made—

(1) when the item is a meat or meat food product described in section 3903(2)(A) of this title, before the 4th day after the required payment date;

(2) when the item is an agricultural commodity described in section 3903(2)(B) of this title, before the 6th day after the required payment date; or

(3) when the item is not an item referred to in clauses (1) and (2) of this subsection, before the 16th day after the required payment date.

(c) An amount of an interest penalty unpaid after any 30-day period shall be added to the principal amount of the debt, and a penalty accrues thereafter on the added amount.

(d) This section does not authorise the appropriation of additonal amounts to pay an interest penalty. The head of an agency shall pay a penalty under this section out of amounts made available to carry out the program for which the penalty is incurred.

(e) A recipient of a grant from the head of an agency may provide in a contract for the acquisition of property or service from a business concern that, consistent with the usual business practices of the recipient and applicable State and local law, the recipient will pay an interest penalty on amounts overdue under the contract under conditions agreed to by the recipient and the concern. The recipient may not pay the penalty from amounts received from an agency. Amounts expended for the penalty may not be counted toward a matching requirement applicable to the grant. An obligation to pay the penalty is not an obligation of the United States Government.

(Added Pub. L. 97-452, § 1(18)(A), Jan. 12, 1983, 96 Stat. 2475.)

§ 3903. Regulations

The Director of the Office of Management and Budget shall prescribe regulations to carry out section 3902 of this title. The regulations shall—

(1) provide that the required payment date is—

(A) the date payment is due under the contract for the item of property or service provided; or

(B) 30 days after a proper invoice for the amount due is received if a specific payment date is not established by contract;

(2) for the acquisition of meat or a meat food product (as defined in section 2(a)(3) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182(3))), provide a required payment date of not later than 7 days after the meat or meat food product is delivered; and

(3) for the acquisition of a perishable agricultural commodity (as defined in section 1(4) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(4))), provide a required payment date consistent with that Act;

(4) provide separate required payment dates for a contract under which property or service is provided in a series of partial executions or deliveries to the extent the contract provides for separate payments for partial execution or delivery; and

(5) require that, within 15 days after an invoice is received, the head of an agency notify the business concern of a defect or impropriety in the invoice that would prevent the running of the time period specified in clause (1)(B) of this section.

(Added Pub. L. 97-452, § 1(18)(A), Jan. 12, 1983, 96 Stat. 2476.)

§ 3904. Limitations on discount payments

The head of an agency offered a discount by a business concern from an amount due under a contract for property or service in exchange for payment within a specified time may pay the discounted amount only if payment is made within the specified time. The head of the agency shall pay an interest penalty on an amount remaining unpaid in violation of this section. The penalty accrues as provided under sections 3902 and 3903 of this title, except that the required payment date for the unpaid amount is the last day specified in the contract that the discounted amount may be paid.

(Added Pub. L. 97-452, § 1(18)(A), Jan. 12, 1983, 96 Stat. 2476.)

§ 3905. Reports

(a) By the 60th day after the end of each fiscal year, the head of each agency shall submit to the Director of the Office of Management and Budget a report on interest penalty payments made under this chapter during that fiscal year. The report shall include the number, amounts, and frequency of the payments and the reasons the payments were not avoided by prompt payment.

(b) By the 120th day after the end of each fiscal year, the Director shall submit to the Committees on Governmental Affairs, Appropriations, and Small Business of the Senate and the Committees on Government Operations, Appropriations, and Small Business of the House of Representatives a report on agency compliance with this chapter. The report shall include a summary of the report of each agency submitted under subsection (a) of this section and an analysis of progress made in reducing interest penalty payments by that agency from prior years.

(Added Pub. L. 97-452, § 1(18)(A), Jan. 12, 1983, 96 Stat. 2476.)

§ 3906. Relationship to other laws

(a) A claim for an interest penalty not paid under this chapter may be filed under section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605).

(b)(1) An interest penalty under this chapter does not continue to accrue—

(A) after a claim for a penalty is filed under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.); or

(B) for more than one year.

(2) Paragraph (1) of this subsection does not prevent an interest penalty from accruing under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) after a penalty stops accruing under this chapter. A penalty accruing under section 12 may accrue on an unpaid contract payment and on the unpaid penalty under this chapter.

(c) Except as provided in section 3904 of this title, this chapter does not require an interest penalty on a payment that is not made because of a dispute between the head of an agency and a business concern over the amount of payment or compliance with the contract. A claim related to the dispute, and interest payable for the period during which the dispute is being resolved, is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

(Added Pub. L. 97-452, § 1(18)(A), Jan. 12, 1983, 96 Stat. 2477.)

56. 31 U.S.C. 6101-6102

The Director of OMB is made responsible for the collection and review of certain Federal assistance program information and data.

CHAPTER 61—PROGRAM INFORMATION

Sec.
6101. Definitions.
6102. Program information requirements.
6102a. Assistance awards information system.
6103. Access to computer information system.
6104. Catalog of Federal domestic assistance programs.
6105. Authorization of appropriations.

Amendments

1983—Pub. L. 97-452, § 1(23)(B), Jan. 12, 1983, 96 Stat. 2476, added item 6102a.

§ 6101. Definitions

In this chapter—

(1) "administering office" means the lowest unit of an agency responsible for managing a domestic assistance program.

(2) "agency" has the same meaning given that term in section 551(1) of title 5.

(3) "assistance"—

(A) means the transfer of anything of value for a public purpose of support or stimulation authorized by a law of the United States, including—

(i) financial assistance;

(ii) United States Government facilities, services, and property; and

(iii) expert and technical information; and

(B) does not include conventional public information services or procurement of property or services for the direct benefit or use of the Government.

(4) "domestic assistance program"—

(A) means assistance from an agency for—

(i) a State;

(ii) the District of Columbia;

(iii) a territory or possession of the United States;

(iv) a county;

(v) a city;

(vi) a political subdivision or instrumentality of a governmental authority listed in subclauses (i)-(v) of this clause (A);

(vii) a domestic corporation;

(viii) a domestic institution; and

(ix) an individual of the United States; and

(B) does not include a department, agency, or instrumentality of the Government.

(5) "Director" means the Director of the Office of Management and Budget.

(6) "Administrator" means the Administrator of General Services.

(7) "formula" means any prescribed method employing objective data or statistical estimates for making individual determinations among recipients of Federal funds, either in terms of eligibility or actual funding allocations, that can be written in the form of either—

(A) a closed mathematical statement; or

(B) an iterative procedure or algorithm which can be written as a computer program;

and from which the results can be objectively replicated, within reasonable limits due to rounding error, through independent application of such statement, procedures, or algorithm, by different qualified individuals.

(As amended Pub. L. 98-169, §§ 1(1), 3(a), Nov. 29, 1983, 97 Stat. 1113.)

§ 6102. Program information requirements

(a) The Director shall collect and review information on domestic assistance programs and shall provide such information to the Administrator. The information on each domestic assistance program shall include the following:

(1) identification of the program by—

(A) title;

(B) authorizing law;

(C) administering office; and

(D) an identifying number assigned by the Director.

(2) a description of the—

(A) program;

(B) objectives of the program;

(C) types of activities financed under the program;

(D) eligibility requirements;

(E) types of assistance;

(F) uses, and restrictions on the use, of assistance; and

(G) duties of recipients under the program.

(3) a specification of each formula governing eligibility for assistance or the distribution of assistance under the program, which shall be described through the use of—

(A) the language used to specify each such formula in the law authorizing the program;

(B) the language used to specify each such formula in any Federal rule promulgated pursuant to the law authorizing the program; or

(C) a mathematical statement which is derived from the language referred to in subparagraphs (A) and (B) of this paragraph;

(4) a description of all data and statistical estimates used to carry out each formula specified pursuant to paragraph (3), and an identification of the sources of such data and estimates;

(5) financial information, including the—

(A) amounts appropriated for the current fiscal year or, if unavailable, the amounts requested by the President and the amounts obligated; and

(B) average amounts of awards made in past years.

(6) identification of information contacts, including the administering office and regional and local offices with their addresses and telephone numbers.

(7) a general description of—

(A) the application requirements and procedures; and

(B) to the extent practical, an estimate of the time required to process the application.

(b) On request of the Director, an agency shall give to the Director current information on all domestic assistance programs administered by the agency. The Director shall be responsible for ensuring that the Administrator incorporates all relevant information received on a regular basis.

(c) The Administrator—

(1) shall ensure that information and catalogs under this chapter are made available to the public at reasonable prices;

(2) may develop information services to assist State and local governments in identifying and obtaining sources of assistance;

(3) shall ensure that the information in the computerized system is made current on a regular basis and that the printed catalog and supplements thereto contain the most current data available at the time of printing; and

(4) shall transmit annually the information compiled under paragraphs (3) and (4) of subsection (a) to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate.

(As amended Pub. L. 98-169, §§ 1(2), 2, 3(b), (c), Nov. 29, 1983, 97 Stat. 1113, 1114.)

CONSOLIDATED FEDERAL FUNDS REPORT

Pub. L. 97-326, Oct. 15, 1982, 96 Stat. 1607, as amended by Pub. L. 97-452, § 4(b), Jan. 12, 1983, 96 Stat. 2480, provided that:

"SECTION 1. This Act may be cited as the 'Consolidated Federal Funds Report Act of 1982.'

"SEC. 2. As used in this Act, the term—

"(1) 'Director means the Director of the Office of Management and Budget;

"(2) 'State' means any State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Government of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

"(3) 'municipality' means any subcounty unit of local government that received Federal assistance under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221) (see 31 U.S.C. 6701 et seq.) for the appropriate fiscal year.

"SEC. 3. (a) For fiscal years 1983, 1984, and 1985, not of each fiscal year, the Director shall prepare a Consolidated Federal Funds Report presenting the total amount of Federal funds that were obligated for expenditure in or expended in each State, county or parish, congressional district, and municipality of the United States in appropriate general categories of Federal funds during the preceding fiscal year. The report shall be in the form described in subsection (b) and shall be based on the data referred to in subsection (c).

"(b) The Director shall include in each report required by subsection (a)—

"(1) the total amount of Federal funds that were reported obligated for expenditure in each State, county or parish, congressional district, and municipality of the United States in appropriate general categories of Federal funds in the fiscal year preceding the fiscal year in which the report is made; or

"(2) the total amount of Federal funds that were reported actually expended in each State, county or parish, congressional district, and municipality of the United States in appropriate categories in the fiscal year preceding the fiscal year in which the report is made.

"(c) The report required by subsection (a) shall be based on the data included in—

"(1) the Federal assistance awards data system established as a result of the study referred to in the first sentence of section 8;

"(2) the Federal procurement data system referred to in section 6(d)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(5));

"(3) the appropriate data file of the Office of Personnel Management; and

"(4) the records of the Office of the Secretary of Defense.

"(d) For the purposes of subsection (b), the general categories of Federal funds presented in each report required by subsection (a) shall include data with respect to grants, loans, purchases and contracts, cooperative agreements, direct Federal payments to individuals, pay of civilian employees of the Government, military pay, annuities, retirement pay, pensions, and disability compensation.

"SEC. 4. (a) The Director shall prepare a report setting forth the total amount of Federal funds that were obligated for expenditure in or expended in each State in appropriate general categories of Federal funds during each of the fiscal years 1981 and 1982. The report shall be in the form described in subsection (b).

"(b) The Director shall include in each report required by subsection (a)—

"(1) the total amount of Federal funds that were reported obligated for expenditure in each State in appropriate general categories of Federal funds in the fiscal year preceding the fiscal year in which the report is made; or

"(2) the total amount of Federal funds that were reported actually expended in each State in appropriate general categories in the fiscal year preceding the fiscal year in which the report is made.

"(c) For the purposes of subsection (b), the general categories of Federal funds presented in each report required by subsection (a) shall include data with respect to grants, loans, purchases and contracts, direct Federal payments to individuals, pay of civilian employees of the Government, military pay, annuities, retirement pay, pensions, disability compensation, and other large programs or categories where data are available such as the National Aeronautics and Space Administration and the Army Corps of Engineers.

"(d) The reports required by subsection (a) shall be available no later than one hundred and twenty days after the end of fiscal year 1982.

"SEC. 5. (a)(1) The Director shall—

"(A) prepare—

"(i) printed copies of each of the reports required by this Act; and

"(ii) computer tapes of such reports; and

"(B) make the printed copies of the reports and the computer tapes available to the public for purchase at a price fixed under subsection (b).

"(2) The Director shall transmit free of charge one of each of the printed copies of the reports required by this Act to—

"(A) each Federal regional depository library;

"(B) the Committees on Government Operations, the Budget, and Appropriations of the House of Representatives; and

"(C) the Committees on Governmental Affairs, the Budget, and Appropriations of the Senate.

"(3) The Director shall also promptly transmit, free of charge, one computer tape of the report required by section 3 annually and of the data in the system required by section 8 quarterly to the Committee on rules and Administration of the Senate and to the Committee on House Administration of the House of Representatives.

"(4) Subject to subsection (b), the Director may, at his discretion, waive all or part of the fee required by subsection (a)(1)(B) of this section.

"(b) In carrying out subsection (a)(1)(B), the Director shall, based on the estimates made under paragraphs (1) and (2) of this subsection, fix the price of each printed copy and each computer tape of the report so that the aggregate revenues obtained in each fiscal year under subsection (a) will cover as much of the incremental costs incurred in making these reports and tapes available for purchase by the public as is feasible. In computing these costs the Director shall not consider the costs of the activities set forth in sections 7, 8, and 10, but shall consider—

"(1) the cost of compiling the reports required by this Act; preparing the printed copies and computer tapes under subsection (a); and distributing the printed copies and the computer tapes of the report for each fiscal year; and

"(2) the number of printed copies and the number of computer tapes of the report that will be purchased.

"Sec. 6. In order to carry out sections 3, 4, and 5 of this Act, the Director may delegate to any authority of the executive branch of the Federal Government the responsibility for carrying out such sections. The Director shall oversee the activities of any authority to which responsibilities are delegated under this section and shall monitor the compliance of each authority with respect to the requirements set forth in section 7.

"Sec. 7. Each head of any authority of the Government having custody of the data files and systems referred to in section 3(c) shall make available to the Director or other authority to which the Director has delegated the responsibility to carry out such section, such information, administrative services, equipment, personnel, and facilities as the Director or such authority requires to carry out such section.

"Sec. 8. [Repealed. Pub. L. 97-452, § 4(b), Jan. 12, 1983, 96 Stat. 2480. Reenacted as 31 U.S.C. 6102a.]

"Sec. 9. The Director shall designate a single organizational unit to provide for data consistency and uniform reporting of data elements.

"Sec. 10. The Comptroller General shall conduct a review of the data systems and reports required by this Act. This review shall include a determination of the accuracy of the data contained within the report required by section 3 and the costs of data collection, report preparation, and dissemination of such data and report. The review shall also include an analysis of the use and primary users of the data. In making this review, the Comptroller General shall consult with Members of Congress, the Congressional Budget Office, the Office of Management and Budget, the Committee on Rules and Administration of the Senate, the Committee on House Administration of the House of Representatives, the Census Bureau, representatives of State and local governments, and any other persons he deems appropriate. This review shall be submitted to the Committee on Governmental Affairs of the Senate and the Committee on Operations of the House of Representatives no later than October 1, 1984.

"Sec. 11. (a) Each head of any executive department or establishment that has compiled or can readily compile data that would have been included in the reports entitled 'the Geographic Distribution of Federal Funds' for fiscal year 1981 or fiscal year 1982, or both, shall forward a copy of such to the Committee on Rules and Administration of the Senate and to the Committee on House Administration of the House of Representatives. Delivery of such shall be made within sixty days after enactment of this Act for fiscal year 1981 and within one hundred and twenty days of the close of the fiscal year for fiscal year 1982.

"(b) Each head of any executive department or establishment who does not forward a copy of data as required by subsection (a) for fiscal year 1981 or fiscal year 1982 shall submit a statement to that effect, along with a statement of the reasons for the failure, to the Committee on Rules and Administration of the Senate and to the Committee on House Administration of the House of Representatives."

§ 6102a. Assistance awards information system

(a) The Director shall—

(1) maintain the United States Government assistance awards information system established as a result of the study conducted under section 9 of the Federal Program Information Act; and

(2) update the system on a quarterly basis.

(b) To carry out subsection (a) of this section, the Director—

(1) may delegate the responsibility for carrying out subsection (a) of this section to the head of another executive agency;

(2) shall review a report the head of an agency submits to the Director on the method of carrying out subsection (a) of this section; and

(3) may validate, by appropriate means, the method by which an agency prepares the report.

(Added Pub. L. 97-452, § 1(23)(A), Jan. 12, 1983, 96 Stat. 2477.)

57. 31 U.S.C. 6307

The Director of OMB may issue guidelines with respect to the use of procurement contracts, grant agreements, and cooperative agreements, and may grant exemptions from such requirements.

§ 6307. Interpretative guidelines and exemptions

The Director of the Office of Management and Budget may—

(1) issue supplementary interpretative guidelines to promote consistent and efficient use of procurement contracts, grant agreements, and cooperative agreements; and

(2) exempt a transaction or program of an executive agency from this chapter.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 1005.)

58. 31 U.S.C. 6506

Executive Order 12,372 delegated to the Director of OMB the authority to promulgate regulations to implement the Intergovernmental Cooperation Act.

§ 6506. Development assistance

(a) The economic and social development of the United States and the achievement of satisfactory levels of living depend on the sound and orderly development of urban and rural areas. When urbanization proceeds rapidly, the sound and orderly development of urban communities depends to a large degree on the social and economic health and the sound development of smaller communities and rural areas.

(b) The President shall prescribe regulations governing the formulation, evaluation, and review of United States Government programs and projects having a significant impact on area and community development (including programs and projects providing assistance to States and localities) to serve most effectively the basic objectives of subsection (a) of this section. The regulations shall provide for the consideration of concurrently achieving the following specific objectives and, to the extent authorized by law, reasoned choices shall be made between the objectives when they conflict:

(1) appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes.

(2) wise development and conservation of all natural resources.

(3) balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other means to move people and goods.

(4) adequate outdoor recreation and open space.

(5) protection of areas of unique natural beauty and historic and scientific interest.

(6) properly planned community facilities (including utilities for supplying power, water, and communications) for safely disposing of wastes, and for other purposes.

(7) concern for high standards of design.

(c) To the extent possible, all national, regional, State, and local viewpoints shall be considered in planning development programs and projects of the United States Government or assisted by the Government. State and local government objectives and the objectives of regional organizations shall be considered within a framework of national public objectives expressed in laws of the United States. Available projections of future conditions in the United States and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review.

(d) To the maximum extent possible and consistent with national objectives, assistance for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning. Consideration shall be given to all developmental aspects of our total national community, including housing, transportation, economic development, natural and human resources development, community facilities, and the general improvement of living environments.

(e) To the maximum extent practicable, each executive agency carrying out a development assistance program shall consult with and seek advice from all other significantly affected executive agencies in an effort to ensure completely coordinated programs. To the extent possible, systematic planning required by individual United States Government programs (such as highway construction, urban renewal, and open space) shall be coordinated with and, to the extent authorized by law, made part of comprehensive local and areawide development planning.

(f) When a law of the United States provides that both a special-purpose unit of local government and a unit of general local government are eligible to receive a loan or grant, the head of an executive agency shall make the loan or grant to the unit of general local government instead of the special-purpose unit of local government in the absence of substantial reasons to the contrary.

(g) The President may designate an executive agency to prescribe regulations to carry out this section.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 1008.)

59. 31 U.S.C. 9103

The President prescribes the form and time wholly owned government corporations submit their budgets to him and he is free to change those proposals at any time. The President's authority has been delegated to OMB under Executive Order 11,541.

§ 9103. Budgets of wholly owned Government corporations

(a) Each wholly owned Government corporation shall prepare and submit each year to the President a business-type budget in a way, and before a date, the President prescribes by regulation for the budget program.

(b) The budget program for each wholly owned Government corporation shall—

(1) contain estimates of the financial condition and operations of the corporation for the current and following fiscal years and the condition and results of operations in the last fiscal year;

(2) contain statements of financial condition, income and expense, and sources and use of money, an analysis of surplus or deficit, and additional statements and information to make known the financial condition and operations of the corporation, including estimates of operations by major activities, administrative expenses, borrowings, the amount of United States Government capital that will be returned to the Treasury during the fiscal year, and appropriations needed to restore capital impairments; and

(3) provide for emergencies and contingencies and otherwise be flexible so that the corporation may carry out its activities.

(c) The President shall submit the budget programs submitted by wholly owned Government corporations (as changed by the President) as part of the budget submitted to Congress under section 1105 of this title. The President thereafter may submit changes in a budget program of a corporation at any time.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 1042.)

60. 33 U.S.C. 947

OMB has approval authority over expenditure of funds for administrative expenses from a special fund in the Department of Treasury set up for administration of the Longshoremen's and Harbor Workers' Compensation program.

§ 945. Administration fund

(a) There is established in the Treasury of the United States a special fund for the purpose of providing for the payment of all expenses in respect of the administration of this chapter. Such fund shall be administered by the Secretary. The Treasurer of the United States shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be the money or property of the United States.

(b) The provisions of subsections (b), (d), and (f) of section 944 of this title shall be applicable to the fund established.

(Mar. 4, 1927, ch. 509, § 45, 44 Stat. 1445.)

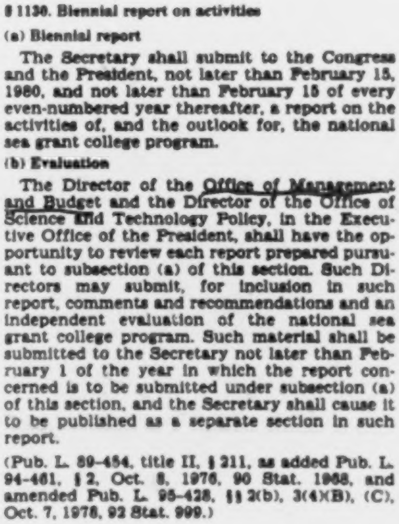
§ 947. Availability of appropriations

The expenses incurred for salaries and contingent expenses by the Secretary in the administration (1) of subchapter I of chapter 81 of title 5, and (2) of this chapter, may be paid from the appropriations for salaries and contingent expenses for the administration of said subchapter I of chapter 81 of title 5, and from the fund established in section 945 of this title, in such proportion as the Secretary, with the approval of the Director of the Office of Management and Budget, determines to be fairly attributable to the cost of administration of the respective chapters, but the total amount paid from such appropriation and such fund in any fiscal year on account of the administration of said subchapter I of chapter 81 of title 5, shall not exceed the amounts appropriated for salaries and contingent expenses for the administration of said subchapter I of chapter 81 for such year.

(Mar. 4, 1927, ch. 509, § 47, 44 Stat. 1445; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

61. 33 U.S.C. 1130

The OMB Director reviews and may make comments, recommendations and include an independent evaluation of the Secretary of Commerce's biennial report on the national sea grant college program.



§ 1130. Biennial report on activities

(a) Biennial report

The Secretary shall submit to the Congress and the President, not later than February 15, 1980, and not later than February 15 of every even-numbered year thereafter, a report on the activities of, and the outlook for, the national sea grant college program.

(b) Evaluation

The Director of the Office of Management and Budget and the Director of the Office of Science and Technology Policy, in the Executive Office of the President, shall have the opportunity to review each report prepared pursuant to subsection (a) of this section. Such Directors may submit, for inclusion in such report, comments and recommendations and an independent evaluation of the national sea grant college program. Such material shall be submitted to the Secretary not later than February 1 of the year in which the report concerned is to be submitted under subsection (a) of this section, and the Secretary shall cause it to be published as a separate section in such report.

(Pub. L. 89-454, title II, § 211, as added Pub. L. 94-461, § 2, Oct. 8, 1976, 90 Stat. 1968, and amended Pub. L. 95-428, §§ 2(b), 3(4)(B), (C), Oct. 7, 1978, 92 Stat. 999.)

62. 33 U.S.C. 1803(a), (f)

The Secretaries of Transportation and Commerce must consult with the Director of OMB, among others, with respect to their report and recommendations on the use of user taxes and charges for inland waterways. The OMB recommendations are to be included in the final report.

§ 1803. Study with respect to inland waterway user taxes and charges

(a) Study directed

The Secretary of Transportation, and the Secretary of Commerce, in consultation with the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Energy, the Attorney General of the United States, the Secretary of the Army, the Chairman of the Water Resources Council, and the Director of the Office of Management and Budget, shall—

(1) make a full and complete study with respect to inland waterway user taxes and charges, and

(2) make findings and policy recommendations with respect thereto.

Such study shall include (but shall not be limited to) a consideration of the matters listed in subsections (b), (c), (d), (e), and (f) of this section.

* * *

(f) Report

Not later than September 30, 1981, the Secretary of Transportation shall transmit to Congress a final report of the study required by this section, together with his findings and recommendations (including necessary legislation) and the findings and recommendations of the Secretary of Commerce, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Energy, the Attorney General of the United States, the Secretary of the Army, the Chairman of the Water Resources Council, and the Director of the Office of Management and Budget.

63. 35 U.S.C. 206

The Office of Federal Procurement Policy is authorized to issue regulations to facilitate the use of inventions made by small businesses and non-profit organizations, including universities, under funding agreements with Federal agencies. See OMB Circular No. A-124, "Patents -- Small Business Firms and Non-Profit Organizations."

§ 206. Uniform clauses and regulations

The Office of Federal Procurement Policy, after receiving recommendations of the Office of Science and Technology Policy, may issue regulations which may be made applicable to Federal agencies implementing the provisions of sections 202 through 204 of this chapter and the Office of Federal Procurement Policy shall establish standard funding agreement provisions required under this chapter.

(Added Pub. L. 96-517, § 6(a), Dec. 12, 1980, 94 Stat. 3023.)

64. 38 U.S.C. 616

OMB sets per diem rate for amounts to be charged the Veterans' Administration for the care and treatment of veterans in hospitals that is to be reimbursed other agencies.

§ 616. Hospital care by other agencies of the United States

When so specified in an appropriation or other Act, the Administrator may make allotments and transfers to the Departments of Health and Human Services (Public Health Service), the Army, Navy, Air Force, or Interior, for disbursement by them under the various headings of their appropriations, of such amounts as are necessary for the care and treatment of veterans entitled to hospitalization from the Veterans' Administration under this chapter. The amounts to be charged the Veterans' Administration for care and treatment of veterans in hospitals shall be calculated on the basis of a per diem rate approved by the Office of Management and Budget.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1143; Pub. L. 94-581, title II, § 202(g), Oct. 21, 1976, 90 Stat. 2856; Pub. L. 97-295, § 4(95)(A), Oct. 12, 1982, 96 Stat. 1313.)

65. 38 U.S.C. 774

The OMB Director is a member of the Advisory Council on Servicemen's Group Life Insurance.

§ 774. Advisory Council on Servicemen's Group Life Insurance

There is hereby established an Advisory Council on Servicemen's Group Life Insurance consisting of the Secretary of the Treasury as Chairman, the Secretary of Defense, the Secretary of Commerce, the Secretary of Health and Human Services, the Secretary of Transportation, and the Director of the Office of Management and Budget each of whom shall serve without additional compensation. The Council shall meet once a year, or oftener at the call of the Administrator, and shall review the operations under this subchapter and advise the Administrator on matters of policy relating to his activities thereunder.

(Added Pub. L. 89-214, § 1(a), Sept. 29, 1965, 79 Stat. 885, and amended Pub. L. 91-291, § 6, June 25, 1970, 84 Stat. 331; Pub. L. 93-289, § 10(3), May 24, 1974, 88 Stat. 172; Pub. L. 97-295, § 4(95)(A), Oct. 12, 1982, 96 Stat. 1313.)

66. 39 U.S.C. 2009

The Postal Service must submit its budget proposal to OMB in the form and with the content as OMB directs.

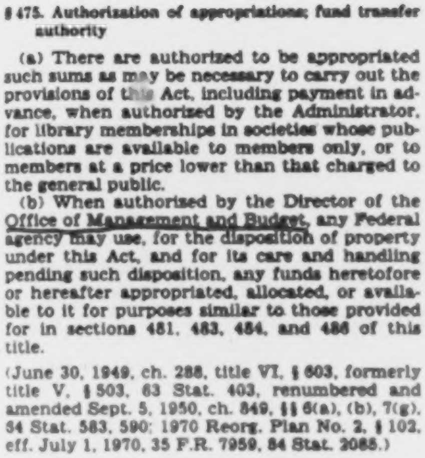
§ 2009. Annual budget

The Postal Service shall cause to be prepared annually a budget program which shall be submitted to the Office of Management and Budget, under such rules and regulations as the President may establish as to the date of submission, the form and content, the classifications of data, and the manner in which such budget program shall be prepared and presented. The budget program shall be a business-type budget, or plan of operations, with due allowance given to the need for flexibility, including provision for emergencies and contingencies, in order that the Postal Service may properly carry out its activities as authorized by law. The budget program shall contain estimates of the financial condition and operations of the Postal Service for the current and ensuing fiscal years and the actual condition and results of operation for the last completed fiscal year. Such budget program shall include a statement of financial condition, a statement of income and expense, an analysis of surplus or deficit, a statement of sources and application of funds, and such other supplementary statements and information as are necessary or desirable to make known the financial condition and operations of the Postal Service. Such statements shall include estimates of operations by major types of activities, together with estimates of administrative expenses and estimates of borrowings. The budget program shall also include separate statements of the amounts which the Postal Service requests to be appropriated under subsections (b) and (c) of section 2401 of this title. The President shall include these amounts, with his recommendations but without revision, in the budget transmitted to Congress under section 1105 of title 31.

(Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 742; Pub. L. 93-328, § 3, June 30, 1974, 88 Stat. 288; Pub. L. 97-258, § 3(l)(2), Sept. 13, 1982, 96 Stat. 1066.)

67. 40 U.S.C. 475

OMB authorizes use of appropriated funds for disposition of property.



§ 475. Authorization of appropriations; fund transfer authority

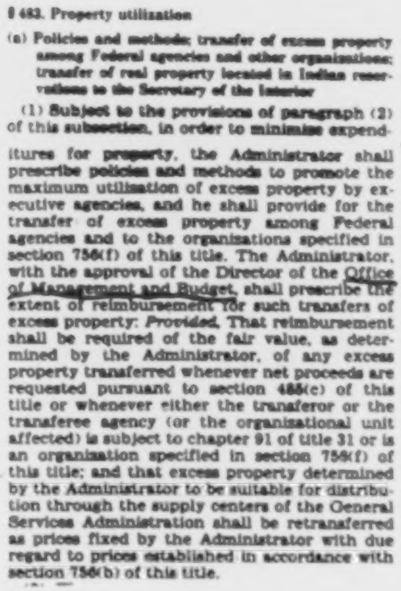
(a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including payment in advance, when authorized by the Administrator, for library memberships in societies whose publications are available to members only, or to members at a price lower than that charged to the general public.

(b) When authorized by the Director of the Office of Management and Budget, any Federal agency may use, for the disposition of property under this Act, and for its care and handling pending such disposition, any funds heretofore or hereafter appropriated, allocated, or available to it for purposes similar to those provided for in sections 481, 483, 484, and 486 of this title.

(June 30, 1949, ch. 288, title VI, § 603, formerly title V, § 503, 63 Stat. 403, renumbered and amended Sept. 5, 1950, ch. 849, §§ 6(a), (b), 7(g), 64 Stat. 583, 590; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

68. 40 U.S.C. 483(a)(1)

OMB approves the extent of reimbursement for transfers of excess property between agencies.



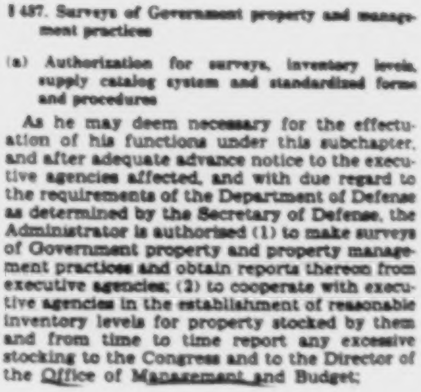
§ 483. Property utilization

(a) Policies and methods; transfer of excess property among Federal agencies and other organizations; transfer of real property located in Indian reservations to the Secretary of the Interior

(1) Subject to the provisions of paragraph (2) of this subsection, in order to minimize expenditures for property, the Administrator shall prescribe policies and methods to promote the maximum utilization of excess property by executive agencies, and he shall provide for the transfer of excess property among Federal agencies and to the organizations specified in section 756(f) of this title. The Administrator, with the approval of the Director of the Office of Management and Budget, shall prescribe the extent of reimbursement for such transfers of excess property: *Provided*, That reimbursement shall be required of the fair value, as determined by the Administrator, of any excess property transferred whenever net proceeds are requested pursuant to section 485(c) of this title or whenever either the transferor or the transferee agency (or the organizational unit affected) is subject to chapter 91 of title 31 or is an organization specified in section 756(f) of this title; and that excess property determined by the Administrator to be suitable for distribution through the supply centers of the General Services Administration shall be retransferred as prices fixed by the Administrator with due regard to prices established in accordance with section 756(b) of this title.

69. 40 U.S.C. 487(a)

The Administrator of GSA must report to the OMB Director any excessive stocking of property by an agency.



§ 487. Surveys of Government property and management practices

(a) Authorization for surveys, inventory levels, supply catalog system and standardized forms and procedures

As he may deem necessary for the effectuation of his functions under this subchapter, and after adequate advance notice to the executive agencies affected, and with due regard to the requirements of the Department of Defense as determined by the Secretary of Defense, the Administrator is authorized (1) to make surveys of Government property and property management practices and obtain reports thereon from executive agencies; (2) to cooperate with executive agencies in the establishment of reasonable inventory levels for property stocked by them and from time to time report any excessive stocking to the Congress and to the Director of the Office of Management and Budget;

70. 40 U.S.C. 490(d)

The OMB Director, in the interest of economy or efficiency, may transfer from any agency or government corporation all functions with respect to the operation, maintenance, and custody of any federally owned or leased office building.

(g) Limitations on authority of Administrator and Secretary of Commerce; notice and review of Administrator's determinations

The authority conferred upon the Administrator and the Secretary of Commerce by this section shall be exercised subject to direction by the President and to fiscal and policy control exercised by the Office of Management and Budget. Authority so conferred upon the Administrator shall not be so construed as to impair or interfere with the determination by agencies of their individual automatic data processing equipment requirements, including the development of specifications for and the selection of the types and configurations of equipment needed. The Administrator shall not interfere with, or attempt to control in any way, the use made of automatic data processing equipment or components thereof by any agency. The Administrator shall provide adequate notice to all agencies and other users concerned with respect to each proposed determination specifically affecting them or the automatic data processing equipment or components used by them. In the absence of mutual agreement between the Administrator and the agency or user concerned, such proposed determinations shall be subject to review and decision by the Office of Management and Budget unless the President otherwise directs.

(June 30, 1949, ch. 288, title I, § 111, as added Oct. 30, 1965, Pub. L. 89-306, 79 Stat. 1127, and amended 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

(d) Transfer of functions

Whenever the Director of the Office of Management and Budget shall determine such action to be in the interest of economy or efficiency, he shall transfer to the Administrator all functions then vested in any other Federal agency with respect to the operation, maintenance, and custody of any office building owned by the United States or any wholly owned Government corporation, or any office building or part thereof occupied by any Federal agency under any lease, except that no transfer shall be made under this subsection—

(1) of any post-office building unless the Director shall first determine that such building is not used predominantly for post-office purposes, and functions which are transferred hereunder to the Administrator with respect to any post-office building may be delegated by him only to another officer or employee of the General Services Administration or to the Postmaster General;

(2) of any building located in any foreign country;

(3) of any building located on the grounds of any fort, camp, post, arsenal, navy yard, naval training station, airfield, proving ground, military supply depot, or school, or of any similar facility of the Department of Defense, unless and to such extent as a permit for its use by another agency or agencies shall have been issued by the Secretary of Defense or his duly authorized representative;

(4) of any building which the Director of the Office of Management and Budget finds to be a part of a group of buildings which are (A) located in the same vicinity, (B) utilized wholly or predominantly for the special purposes of the agency having custody thereof, and (C) not generally suitable for the use of other agencies; or

(5) of the Treasury Building, the Bureau of Engraving and Printing Building, the buildings occupied by the National Bureau of Standards, and the buildings under the jurisdiction of the regents of the Smithsonian Institution.

71. 40 U.S.C. 759(g)

Decisions with respect to the procurement, maintenance, operation and utilization of automatic data processing equipment and components by the GSA Administrator for Federal agencies is subject to review and, in specified instances, control by OMB.

(g) Limitations on authority of Administrator and Secretary of Commerce; notice and review of Administrator's determinations

The authority conferred upon the Administrator and the Secretary of Commerce by this section shall be exercised subject to direction by the President and to fiscal and policy control exercised by the Office of Management and Budget. Authority so conferred upon the Administrator shall not be so construed as to impair or interfere with the determination by agencies of their individual automatic data processing equipment requirements, including the development of specifications for and the selection of the types and configurations of equipment needed. The Administrator shall not interfere with, or attempt to control in any way, the use made of automatic data processing equipment or components thereof by any agency. The Administrator shall provide adequate notice to all agencies and other users concerned with respect to each proposed determination specifically affecting them or the automatic data processing equipment or components used by them. In the absence of mutual agreement between the Administrator and the agency or user concerned, such proposed determinations shall be subject to review and decision by the Office of Management and Budget unless the President otherwise directs.

(June 30, 1949, ch. 288, title I, § 111, as added Oct. 30, 1965, Pub. L. 89-306, 79 Stat. 1127, and amended 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

72. 41 U.S.C. 401-406

Establishes Office of Federal Procurement Policy in OMB to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies. See also Executive Order 12,092.

CHAPTER 7—OFFICE OF FEDERAL PROCUREMENT POLICY

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§ 401. Congressional declaration of policy

It is declared to be the policy of Congress to promote economy, efficiency, and effectiveness in the procurement of property and services by and for the executive branch of the Federal Government by—

(1) promoting the use of full and open competition in the procurement of products and services;

(2) establishing policies, procedures, and practices which will require the Government to acquire property and services of the requisite quality and within the time needed at the lowest reasonable cost;

(3) improving the quality, efficiency, economy, and performance of Government procurement organizations and personnel, and eliminating fraud and waste in the procurement process;

(4) avoiding or eliminating unnecessary overlapping or duplication of procurement and related activities;

(5) avoiding or eliminating unnecessary or redundant requirements placed on contractor and Federal procurement officials;

(6) identifying gaps, omissions, or inconsistencies in procurement laws, regulations, and directives and in other laws, regulations, and directives, relating to or affecting procurement;

(7) achieving greater uniformity and simplicity, whenever appropriate, in procurement procedures;

(8) otherwise promoting economy, efficiency, and effectiveness in Government procurement organizations and operation;

(9) coordinating procurement policies and programs of the several departments and agencies;

(10) minimizing possible disruptive effects of Government procurement on particular industries, areas, or occupations;

(11) improving understanding of Government procurement laws and policies within the Government and by organizations and individuals doing business with the Government; and

(12) promoting fair dealing and equitable relationships among the parties in Government contracting.

(Pub. L. 93-400, § 2, Aug. 30, 1974, 88 Stat. 796; Pub. L. 96-83, § 2, Oct. 10, 1979, 93 Stat. 648.)

§ 402. Congressional findings and purpose

(a) The Congress finds that economy, efficiency, and effectiveness in the procurement of property and services by the executive agencies will be improved by establishing an office to exercise responsibility for procurement policies, regulations, procedures, and forms.

(b) The purpose of this chapter is to establish an Office of Federal Procurement Policy in the Office of Management and Budget to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies in accordance with applicable laws.

(Pub. L. 93-400, § 3, Aug. 30, 1974, 88 Stat. 796.)

§ 403. Definitions

(a) As used in this chapter, the term "executive agency" means an executive department, a military department, and an independent establishment within the meaning of sections 101, 102, and 104(1), respectively, of title 5, and also a wholly owned Government corporation within the meaning of section 9101(3) of title 31.

(b) As used in this chapter, the term "procurement" includes all stages of the acquisition process, beginning with the process for determining a need for property and services through to the Federal Government's disposition of such property and services.

(Pub. L. 93-400, § 4, Aug. 30, 1974, 88 Stat. 797; Pub. L. 96-83, § 3, Oct. 10, 1979, 93 Stat. 649.)

§ 404. Establishment of Office of Federal Procurement Policy; appointment of Administrator

(a) There is established in the Office of Management and Budget an office to be known as the Office of Federal Procurement Policy (hereinafter referred to as the "Office").

(b) There shall be at the head of the Office an Administrator for Federal Procurement Policy (hereinafter referred to as the "Administrator"), who shall be appointed by the President, by and with the advice and consent of the Senate.

(Pub. L. 93-400, § 5, Aug. 30, 1974, 88 Stat. 797.)

§ 405. Authority and functions of the Administrator

(a) Development and implementation of procurement policies and program coordination for personnel performance improvement

The Administrator shall provide overall leadership in the development and implementation of procurement policies and the coordination of programs to improve the quality and performance of procurement personnel. The Administrator shall develop for submission under section 407(a) of this title a uniform procurement system which shall, to the extent he considers appropriate and with due regard to the program activities of the executive agencies, include uniform policies, regulations, procedures, and forms to be followed by executive agencies—

(1) in the procurement of—

(A) property other than real property in being;

(B) services, including research and development; and

(C) construction, alteration, repair, or maintenance of real property; and

(2) in providing for procurement by recipients of Federal grants or assistance of items specified in clauses (1)(A), (1)(B), and (1)(C) of this subsection, to the extent required for performance of Federal grant or assistance programs.

(b) Inapplicability of such directions and regulations to recipients of Federal grants

Nothing in subsection (a)(2) of this section shall be construed—

(1) to permit the Administrator to authorize procurement or supply support, either directly or indirectly, to recipients of Federal grants or assistance; or

(2) to authorize any action by recipients contrary to State and local laws, in the case of programs to provide Federal grants or assistance to States and political subdivisions.

(c) Development and proposal of a central management system; components and functions of system

The Administrator shall develop and propose a central management system consisting of the Office of Management and Budget, the General Services Administration, and procurement offices in executive agencies to implement and enforce the uniform procurement system described in subsection (a) of this section.

(d) Review, development, etc., of procurement policies, regulations, procedures, and forms, procurement data, procurement personnel, and procurement contracts

The functions of the Administrator shall include—

(1) reviewing the recommendations of the Commission on Government Procurement to determine those recommendations that should be completed, amended, or rejected, and to propose the priority and schedules for completing the remaining recommendations;

(2) developing a system of simplified and uniform procurement policies, regulations, procedures, and forms;

(3) establishing criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

(4) promoting and conducting research in procurement policies, regulations, procedures, and forms, through the Federal Acquisition Institute, which shall be located within the Office and directed by the Administrator;

(5) establish, through the Federal Procurement Data Center, which shall be located in the General Services Administration and acting as executive agent for the Administrator, a computer-based information system for collecting, developing, and disseminating procurement data which takes into account the

needs of the Congress, the executive branch, and the private sector;

(6) recommending and promoting, through the Federal Acquisition Institute, programs of the Office of Personnel Management and executive agencies for recruitment, training, career development, and performance evaluation of procurement personnel;

(7) developing, for inclusion in the uniform procurement system to be submitted under section 407(a) of this title, standard contracts and contract language in order to reduce the Government's cost of procuring goods and services as well as the private sector's cost of doing business with the Government; and

(8) providing leadership and coordination in the formulation of executive branch positions on legislation relating to procurement.

(e) Consultation, etc., with executive agencies

In the development and implementation of the uniform procurement system the Administrator shall consult with the executive agencies affected, including the Small Business Administration and other executive agencies promulgating policies, regulations, procedures and forms affecting procurement. To the extent feasible, the Administrator may designate an executive agency or agencies, establish interagency committees, or otherwise use agency representatives or personnel to solicit the views and the agreement, so far as possible, of executive agencies affected on significant changes in policies, regulations, procedures and forms.

(f) Noninterference with executive agencies

The authority of the Administrator under this chapter shall not be construed to—

(1) impair or interfere with the determination by executive agencies of their need for, or their use of, specified property, services, or construction, including particular specifications therefor; or

(2) interfere with the determination by executive agencies of specific actions in the award or administration of procurement contracts.

(g) Restriction on delegation of other functions

Except as otherwise provided by law, no duties, functions, or responsibilities, other than those expressly assigned by this chapter, shall be assigned, delegated, or transferred to the Administrator.

(h) Issuance of interim policy directives to promote development and implementation of uniform procurement system, etc.; compliance by executive agencies with directives

(1) Until the effective date of legislation implementing a uniform procurement system, the Administrator may, with the concurrence of the Director of the Office of Management and Budget, issue policy directives, in accordance with existing law, for the purpose of promoting the development and implementation of the uniform procurement system or for the purpose of promoting the policies set forth in paragraphs (1) through (8) of section 401 of this title. Such policy directives shall be followed by executive agencies.

(2) Any policy directives issued pursuant to paragraph (1) may require executive agencies to issue implementing regulations which shall be in accord with the criteria and standards set forth in such policy directives.

(i) Interim authority of Director of Office of Management and Budget to deny or rescind promulgation of final agency rule or regulation relating to procurement

Until the effective date of legislation implementing a uniform procurement system, the Director of the Office of Management and Budget shall deny or rescind the promulgation of any final rule or regulation of any executive agency relating to procurement if the Director determines that such rule or regulation is inconsistent with the policies set forth in paragraphs (1) through (8) of section 401 of this title or is inconsistent with any policy directives issued pursuant to subsection (h) of this section.

(j) Other statutory, etc., authorities and responsibilities unaffected

Nothing in this chapter shall be construed—

(1) to impair or affect the authorities or responsibilities conferred by the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 251 et seq.] with respect to the procurement of automatic data processing and telecommunications equipment and services or of real property; or

(2) to limit the current authorities and responsibilities of the Director of the Office of Management and Budget.

(Pub. L. 93-400, § 6, Aug. 30, 1974, 88 Stat. 797; Pub. L. 96-83, § 4, Oct. 10, 1979, 93 Stat. 649.)

§ 405a. Uniform Federal procurement regulations and procedures

The Administrator of the Office of Federal Procurement Policy is authorized and directed, pursuant to the authority conferred by this chapter and subject to the procedures set forth in such chapter, to promulgate a single, simplified, uniform Federal procurement regulation and to establish procedures for insuring compliance with such provisions by all Federal agencies. In formulating such regulations and procedures the Administrator of the Office of Federal Procurement Policy shall, in consultation with the Small Business Administration, conduct analyses of the impact on small business concerns resulting from revised procurement regulations, and incorporate into revised procurement regulations simplified bidding, contract performance, and contract administration procedures for small business concerns.

(Pub. L. 95-507, title II, § 222, Oct. 24, 1978, 92 Stat. 1771.)

§ 406. Administrative powers

Upon the request of the Administrator, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Office to the greatest practicable extent for the performance of functions under this chapter; and

(2) except when prohibited by law, furnish to the Administrator and give him access to all information and records in its possession which the Administrator may determine to be necessary for the performance of the functions of the Office.

(Pub. L. 93-400, § 7, Aug. 30, 1974, 88 Stat. 798.)

§ 407. Responsiveness to Congress

(a) Annual reports on activities; proposals for uniform procurement system, etc.

(1) The Administrator shall keep the Congress and its duly authorized committees fully and currently informed of the major activities of the Office of Federal Procurement Policy, and shall submit a report thereon to the House of Representatives and the Senate annually and at such other times as may be necessary for this purpose.

(2) At the earliest practicable date, but in no event later than one year after October 10, 1979, the Administrator shall transmit to the House of Representatives and the Senate his proposal for a uniform procurement system. Such proposal shall include a full description of the proposed system, projected costs and benefits of the system as proposed, and short- and long-term plans for implementation of the system, including schedules for implementation. At the same time, the Administrator shall transmit a report on the recommendations of the Commission on Government Procurement specified in section 405(d)(1) of this title.

(3) At the earliest practicable date, but in no event later than one year after presentation of the proposal described in paragraph (2) of this subsection, the Administrator shall propose to the House of Representatives and the Senate recommended changes in legislation relating to procurement by executive agencies. If the Administrator deems it necessary, these recommendations shall include a proposal for a consolidated statutory base for procurement by executive agencies.

(4) At the earliest practicable date, but in no event later than the submission of the legislative recommendations described in paragraph (3) of this subsection, the Administrator shall present a proposal for a management system described in section 405(c) of this title to implement and enforce the uniform procurement system.

(b) Submission of policy matter to Congressional committees

At least 30 days prior to the effective date of any policy prescribed under section 405(h) of this title, the Administrator shall transmit to the Committees on Government Operations of the House of Representatives and of the Senate a detailed report on the proposed policy. Such report shall include—

(1) a full description of the policy;

(2) a summary of the reasons for the issuance of such policy; and

(3) the names and positions of employees of the Office who will be made available, prior to such effective date, for full consultation with such Committees regarding such policy.

(c) Waiver of notice requirement by President

In the case of an emergency, the President may waive the notice requirement of subsection (b) of this section by submitting in writing to the Congress his reasons therefor at the earliest practicable date on or before the effective date of any policy.

(Pub. L. 93-400, § 8, Aug. 30, 1974, 88 Stat. 798; Pub. L. 96-83, § 5, Oct. 10, 1979, 93 Stat. 651.)

§ 408. Applicability of existing laws

The authority of an executive agency under any other law to prescribe policies, regulations, procedures, and forms for procurement is subject to the authority conferred in section 405 of this title.

(Pub. L. 93-400, § 9, Aug. 30, 1974, 88 Stat 799.)

§ 409. Effect on existing regulations

Procurement policies, regulations, procedures, or forms in effect as of October 10, 1979, shall continue in effect, as modified from time to time by the issuing offices on their own initiative or in response to policy directives issued under section 405(h) of this title until repealed, amended, or superseded pursuant to the adoption of the uniform procurement system described in section 405 of this title.

(Pub. L. 93-400, § 10, Aug. 30, 1974, 88 Stat. 799; Pub. L. 96-83, § 6, Oct. 10, 1979, 93 Stat. 651.)

§ 410. Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this chapter, and for no other purpose, $4,000,000 for the fiscal year ending September 30, 1980, and for each of the three succeeding fiscal years; and one-third of the funds appropriated for any such fiscal year shall be made available to the Federal Acquisition Institute for the performance of its functions under this chapter. Any subsequent legislation to authorize appropriations to carry out the purposes of this chapter shall be referred in the Senate to the Committee on Governmental Affairs.

(Pub. L. 93-400, § 11, Aug. 30, 1974, 88 Stat. 799; Pub. L. 96-83, § 7, Oct. 10, 1979, 93 Stat. 651.)

§ 411. Delegation of authority by Administrator

(a) The Administrator may delegate, and authorize successive redelegations of, any authority, function, or power under this chapter, other than his basic authority to provide overall leadership in the development of Federal procurement policy, to any other executive agency with the consent of such agency or at the direction of the President.

(b) The Administrator may make and authorize such delegations within the Office as he determines to be necessary to carry out the provisions of this chapter.

(Pub. L. 93-400, § 12, Aug. 30, 1974, 88 Stat. 799; Pub. L. 96-83, § 8, Oct. 10, 1979, 93 Stat. 652.)

§ 412. Comptroller General's access to information from Administrator; rule making procedure

(a) The Administrator and personnel in his Office shall furnish such information as the Comptroller General may require for the discharge of his responsibilities. For this purpose, the Comptroller General or his representatives shall have access to all books, documents, papers, and records of the Office.

(b) The Administrator shall, by regulation, require that formal meetings of the Office, as designated by him, for the purpose of developing procurement policies and regulations shall be open to the public, and that public notice of each such meeting shall be given not less than ten days prior thereto.

(Pub. L. 93-400, § 14, Aug. 30, 1974, 88 Stat. 800; Pub. L. 96-83, § 9, Oct. 10, 1979, 93 Stat. 652.)

73. 42 U.S.C. 242m(a)

OMB may review specified reports by the Secretary of Health and Human Services to Congress and submit comments on them, but may not revise them or delay their submission.

§ 242m. General provisions respecting sections 242b, 242c, 242k, 242*l*, and 242n of this title concerning general authority of Secretary, National Center and other centers for Health Services Research, National Center for Health Statistics, international cooperation, and National Center for Health Care Technology

(a) Reports to Congress, and President and Congress; review by Office of Management and Budget

(1) Not later than December 1 of each year, the Secretary shall make a report to Congress respecting (A) the administration of sections 242b, 242c, 242k, and 242*l* and section 242n of this title during the preceding fiscal year, and (B) the current state and progress of health services research and, health statistics, and health care technology.

(2) The Secretary, acting through the National Center for Health Services Research and the National Center for Health Statistics, shall assemble and submit to the President and the Congress not later than December 1 of each year the following reports:

(A) A report on health care costs and financing. Such report shall include a description and analysis of the statistics collected under section 242k(b)(1)(G) of this title.

(B) A report on health resources. Such report shall include a description and analysis, by geographic area, of the statistics collected under section 242k(b)(1)(E) of this title.

(C) A report on the utilization of health resources. Such report shall include a description and analysis, by age, sex, income, and geographic area, of the statistics collected under section 242k(b)(1)(F) of this title.

(D) A report on the health of the Nation's people. Such report shall include a description and analysis, by age, sex, income, and geographic area, of the statistics collected under section 242k(b)(1)(A) of this title.

(3) The Office of Management and Budget may review any report required by paragraph (1) or (2) of this subsection before its submission to Congress, but the Office may not revise any such report or delay its submission beyond the date prescribed for its submission, and may submit to Congress its comments respecting any such report.

74. 42 U.S.C. 295h-2

OMB may review biennial report of the Secretary of Health and Human Services to Congress and submit comments on it, but may not revise it or delay its submission.

§ 295h-2. Statistics and annual report

(a) Scope of information

The Secretary shall, in coordination with the National Center for Health Statistics (established under section 242k of this title), continuously develop, publish, and disseminate on a nationwide basis statistics and other information respecting public and community health personnel, including—

(1) detailed descriptions of the various types of activities in which public and community health personnel are engaged,

(2) the current and anticipated needs for the various types of public and community health personnel, and

(3) the number, employment, geographic locations, salaries, and surpluses and shortages of public and community health personnel, the educational and licensure requirements for the various types of such personnel, and the cost of training such personnel.

* * *

(c) Report to Congressional committees; legislative recommendations

The Secretary shall submit biennially to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Labor and Human Resources of the Senate a report on—

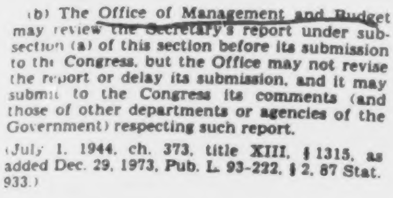
(1) the statistics and other information developed pursuant to subsection (a) of this section, and

(2) the activities conducted under this subpart, including an evaluation of such activities.

Such report shall contain such recommendations for legislation as the Secretary determines are needed to improve the programs authorized under this subpart. The Office of Management and Budget may review such report before its submission to such Committees, but the Office may not revise the report or delay its submission beyond the date prescribed for its submission and may submit to such Committees its comments respecting such report. The first report under this subsection shall be submitted not later than October 1, 1979.

75. 42 U.S.C. 300e-14(b)

OMB may review annual report of the Secretary of Health and Human Services on health maintenance organizations to Congress and submit comments on it, but may not revise it or delay its submission.



(b) The Office of Management and Budget may review the Secretary's report under subsection (a) of this section before its submission to the Congress, but the Office may not revise the report or delay its submission, and it may submit to the Congress its comments (and those of other departments or agencies of the Government) respecting such report.

(July 1, 1944, ch. 373, title XIII, § 1315, as added Dec. 29, 1973, Pub. L. 93-222, § 2, 87 Stat. 933.)

76. 42 U.S.C. 2996d(e)(2)

OMB may review and comment upon Legal Service Corporation's annual budget request.

* * *

§ 2996d. Officers and employees

(2) Nothing in this subchapter shall be construed as limiting the authority of the Office of Management and Budget to review and submit comments upon the Corporation's annual budget request at the time it is transmitted to the Congress.

77. 42 U.S.C. 2996f(2)(A)

Legal Services Corporation must consult with OMB and state governors in establishing maximum income levels for individuals eligible for legal assistance.

§ 2996f. Grants and contracts

(a) Requisites

* * *

(2)(A) establish, in consultation with the Director of the Office of Management and Budget and with the Governors of the several States, maximum income levels (taking into account family size, urban and rural differences, and substantial cost-of-living variations) for individuals eligible for legal assistance under this subchapter;

78. 42 U.S.C. 3334(c)

OMB is empowered to issue regulations to guide areawide agencies or local governments in the review of development loan applications.

§ 3334. Coordination of Federal aids with local governments

* * *

(c) Rules and regulations

The Office of Management and Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this section.

(Pub. L. 89-754, title II, § 204, Nov. 3, 1966, 80 Stat. 1262; Pub. L. 90-351, title I, § 522, June 19, 1968, 82 Stat. 208; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 215.)

79. 42 U.S.C. 3541(c)

OMB is to coordinate and monitor the development of specified forms utilized by departments and agencies with responsibility for housing and housing finance programs and to report on reduction of level of paperwork burden hours as allocated by OMB.

§ 3541. Paperwork reduction

* * *

(c) Coordination and reports by Director of the Office of Management and Budget

The Director of the Office of Management and Budget shall coordinate and monitor the development and implementation by Federal departments and agencies of the efforts required by subsection (b) of this section and shall report to the Congress on such development and implementation and with respect to any provisions of law which unnecessarily prevent such departments and agencies from carrying out the provisions of this section as part of each report required under Public Law 93-556. Such report shall include an estimate of the reduction of the level of paperwork burden hours of the affected agencies as allocated by the Office of Management and Budget.

(Pub. L. 95-557, title IX, § 905, Oct. 31, 1978, 92 Stat. 2128; Pub. L. 96-153, title III, § 328, Dec. 21, 1979, 93 Stat. 1121.)

80. 42 U.S.C. 6982(j)

Representative of OMB is a member of the Resource Conservation Committee.

§ 6982. Special studies: plans for research, development, and demonstrations

* * *

(j) Resource Conservation Committee

(1) The Administrator shall serve as Chairman of a Committee composed of himself, the Secretary of Commerce, the Secretary of Labor, the Chairman of the Council on Environmental Quality, the Secretary of Treasury, the Secretary of the Interior, the Secretary of Energy, the Chairman of the Council of Economic Advisors, and a representative of the Office of Management and Budget, which shall conduct a full and complete investigation and study of all aspects of the economic, social, and environmental consequences of resource conservation with respect to—

(A) the appropriateness of recommended incentives and disincentives to foster resource conservation;

(B) the effect of existing public policies (including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives) upon resource conservation, and the likely effect of the modification or elimination of such incentives and disincentives upon resource conservation;

(C) the appropriateness and feasibility of restricting the manufacture or use of categories of consumer products as a resource conservation strategy;

(D) the appropriateness and feasibility of employing as a resource conservation strategy the imposition of solid waste management charges on consumer products, which charges would reflect the costs of solid waste management services, litter pickup, the value of recoverable components of such product, final disposal, and any social value associated with the nonrecycling or uncontrolled disposal of such product; and

(E) the need for further research, development, and demonstration in the area of resource conservation.

81. 42 U.S.C. 8104(e)

The Synfuels Corporation is subject to administrative and cost standards issued by OMB which are similar to standards applicable to non-profit and educational institutions.

§ 8104. Officers and employees

(e) Employee status; applicability of administrative and cost standards of Office of Management and Budget

Officers and employees of the corporation shall not be considered officers or employees of the United States, and the corporation shall not be considered a department, agency, or instrumentality of the Federal Government. The corporation shall be subject to administrative and cost standards issued by the Office of Management and Budget similar to standards applicable to non-profit grantees and educational institutions.

(Pub. L. 95-557, title VI, § 605, Oct. 31, 1978, 92 Stat. 2116.)

82. 42 U.S.C. 8107(d)

The Synfuels Corporation must submit its annual budget request to OMB in a form and with a content prescribed by OMB and may be modified, amended or revised by OMB.

§ 8107. Appropriations

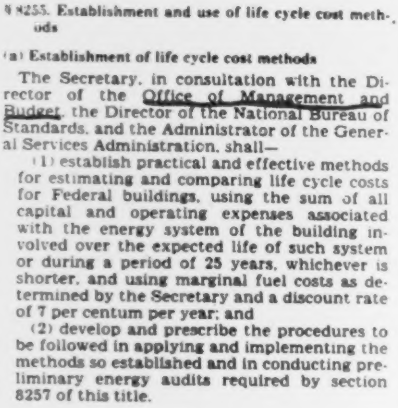
(d) Preparation of business-type budget

The corporation shall prepare annually a business-type budget which shall be submitted to the Office of Management and Budget, under such rules and regulations as the President may establish as to the date of submission, the form and content, the classifications of data, and the manner in which such budget program shall be prepared and presented. The budget of the corporation as modified, amended, or revised by the President shall be transmitted to the Congress as a part of the annual budget required by chapter 11 of title 31. Amendments to the annual budget program may be submitted from time to time.

(Pub. L. 95-557, title VI, § 608, Oct. 31, 1978, 92 Stat. 2119; Pub. L. 96-153, title III, § 307, Dec. 21, 1979, 93 Stat. 1113; Pub. L. 96-399, title III, § 315(3), Oct. 8, 1980, 94 Stat. 1645; Pub. L. 97-35, title III, § 314, Aug. 13, 1981, 95 Stat. 398.)

83. 42 U.S.C. 8255(a)

The Secretary of Energy must consult with the OMB Director in establishing methods for estimating and comparing life cycle costs for Federal buildings for energy conservation purposes.



§ 8255. Establishment and use of life cycle cost methods

(a) Establishment of life cycle cost methods

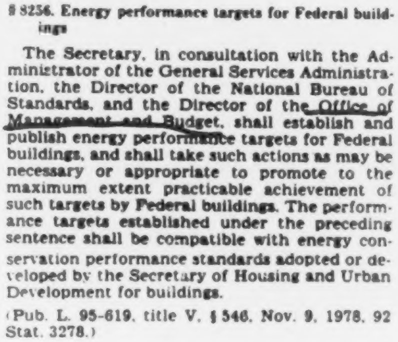
The Secretary, in consultation with the Director of the Office of Management and Budget, the Director of the National Bureau of Standards, and the Administrator of the General Services Administration, shall—

(1) establish practical and effective methods for estimating and comparing life cycle costs for Federal buildings, using the sum of all capital and operating expenses associated with the energy system of the building involved over the expected life of such system or during a period of 25 years, whichever is shorter, and using marginal fuel costs as determined by the Secretary and a discount rate of 7 per centum per year; and

(2) develop and prescribe the procedures to be followed in applying and implementing the methods so established and in conducting preliminary energy audits required by section 8257 of this title.

84. 42 U.S.C. 8256

The Secretary of Energy must consult with the OMB Director in establishing energy performance targets for Federal buildings.



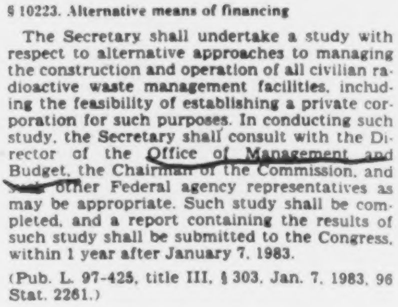
§ 8256. Energy performance targets for Federal buildings

The Secretary, in consultation with the Administrator of the General Services Administration, the Director of the National Bureau of Standards, and the Director of the Office of Management and Budget, shall establish and publish energy performance targets for Federal buildings, and shall take such actions as may be necessary or appropriate to promote to the maximum extent practicable achievement of such targets by Federal buildings. The performance targets established under the preceding sentence shall be compatible with energy conservation performance standards adopted or developed by the Secretary of Housing and Urban Development for buildings.

(Pub. L. 95-619, title V, § 546, Nov. 9, 1978, 92 Stat. 3278.)

85. 42 U.S.C. 10223

The Secretary of Energy must consult with the OMB Director in conducting a study of alternative approaches to the construction and management of civilian radioactive waste management facilities.



§ 10223. Alternative means of financing

The Secretary shall undertake a study with respect to alternative approaches to managing the construction and operation of all civilian radioactive waste management facilities, including the feasibility of establishing a private corporation for such purposes. In conducting such study, the Secretary shall consult with the Director of the Office of Management and Budget, the Chairman of the Commission, and such other Federal agency representatives as may be appropriate. Such study shall be completed, and a report containing the results of such study shall be submitted to the Congress, within 1 year after January 7, 1983.

(Pub. L. 97-425, title III, § 303, Jan. 7, 1983, 96 Stat. 2261.)

86. 44 U.S.C. 1108

OMB authorizes the use of appropriated monies available for printing and funding for the printing of journals, magazines, periodicals and similar publications by executive departments and agencies. See also OMB Circular No. A-3.

§ 1108. Bureau of Budget approval required for printing of periodicals; number printed; sale to public

The head of an executive department, independent agency or establishment of the Government, with the approval of the Director of the Bureau of the Budget, may use from the appropriations available for printing and binding such sums as are necessary for the printing of journals, magazines, periodicals, and similar publications he certifies in writing to be necessary in the transaction of the public business required by law of the department, office, or establishment. There may be printed, in addition to those necessary for the public business, not to exceed two thousand copies for free distribution by the issuing department, office, or establishment. The Public Printer, subject to regulation by the Joint Committee on Printing, shall print additional copies required for sale to the public by the Superintendent of Documents; but the printing of these additional copies may not interfere with the prompt execution of printing for the Government.

(Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1262.)

87. 44 U.S.C. 2904

The Administrator of GSA reports to OMB annually as to activities with respect to records creation, records maintenance and use, and records disposition.

§ 2904. General responsibilities of Administrat

The **Administrator shall provide guidance and assistance to Federal agencies with respect to** records creation, records maintenance and use, and records disposition. In providing such guidance and assistance, the Administrator shall have responsibility to—

(1) promote economy and efficiency in the selection and utilization of space, staff, equipment, and supplies for records management;

(2) promulgate standards, procedures, and guidelines with respect to records management and records management studies;

(3) conduct research with respect to the improvement of records management practices and programs;

(4) serve as a clearinghouse for information with respect to records management and as a central source for reference and training materials with respect to records management;

(5) establish such interagency committees and boards as may be necessary to provide an exchange of information among Federal agencies with respect to records management;

(6) disseminate information with respect to technological development in records management;

(7) direct the continuing attention of Federal agencies and the Congress on the burden placed on the Federal Government by unnecessary paperwork, and on the need for adequate policies governing records creation, maintenance and use, and disposition;

(8) conduct records management studies and, in his discretion, designate the heads of executive agencies to conduct records management studies with respect to establishing systems and techniques designed to save time and effort in records management, with particular attention given to standards and procedures governing records creation;

(9) conduct inspections or records management studies which involve a review of the programs and practices of more than one Federal agency and which examine interaction among and relationships between Federal agencies with respect to records and records management; and

(10) report to the appropriate oversight and appropriations committees of the Congress and to the Director of the Office of Management and Budget annually and at such other times as the Administrator deems desirable (A) on the results of activities conducted pursuant to paragraphs (1) through (9) of this section, (B) on evaluations of responses by Federal agencies to any recommendations resulting from inspections or studies conducted under paragraphs (8) and (9) of this section, and (C) to the extent practicable, estimates of costs to the Federal Government resulting from the failure of agencies to implement such recommendations.

(Added Pub. L. 94-575, § 2(a)(2), Oct. 21, 1976, 90 Stat. 2725, and amended Pub. L. 96-511, § 2(c)(1), Dec. 11, 1980, 94 Stat. 2825.)

88. 44 U.S.C. 3501-3519

The Paperwork Reduction Act invests OMB with broad powers of supervision and control over information collection and retention requirements that may be imposed by Federal departments and agencies.

CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

Sec
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§ 3501. Purpose

The purpose of this chapter is—

(1) to minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons;

(2) to minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information;

(3) to maximize the usefulness of information collected by the Federal Government;

(4) to coordinate, integrate and, to the extent practicable and appropriate, make uniform Federal information policies and practices;

(5) to ensure that automatic data processing and telecommunications technologies are acquired and used by the Federal Government in a manner which improves service delivery and program management, increases productivity, reduces waste and fraud, and, wherever practicable and appropriate, reduces the information processing burden for the Federal Government and for persons who provide information to the Federal Government; and

(6) to ensure that the collection, maintenance, use and dissemination of information by the Federal Government is consistent with applicable laws relating to confidentiality, including section 552a of title 5, United States Code, known as the Privacy Act.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2812.)

§ 3502. Definitions

As used in this chapter—

(1) the term "agency" means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include the General Accounting Office, Federal Election Commission, the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions, or Government-owned contractor-operated facilities including laboratories engaged in national defense research and production activities;

(2) the terms "automatic data processing," "automatic data processing equipment," and "telecommunications" do not include any data processing or telecommunications system or equipment, the function, operation or use of which—

(A) involves intelligence activities;

(B) involves cryptologic activities related to national security;

(C) involves the direct command and control of military forces;

(D) involves equipment which is an integral part of a weapon or weapons system; or

(E) is critical to the direct fulfillment of military or intelligence missions, provided that this exclusion shall not include automatic data processing or telecommunications equipment used for routine administrative and business applications such as payroll, finance, logistics, and personnel management;

(3) the term "burden" means the time, effort, or financial resources expended by persons to provide information to a Federal agency;

(4) the term "collection of information" means the obtaining or soliciting of facts or opinions by an agency through the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or other similar methods calling for either—

(A) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

(B) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes;

(5) the term "data element" means a distinct piece of information such as a name, term, number, abbreviation, or symbol;

(6) the term "data element dictionary" means a system containing standard and uniform definitions and cross references for commonly used data elements;

(7) the term "data profile" means a synopsis of the questions contained in an information collection request and the official name of the request, the location of information obtained or to be obtained through the request, a description of any compilations, analyses, or reports derived or to be derived from such information, any record retention requirements associated with the request, the agency responsible for the request, the statute authorizing the request, and any other information necessary to identify, obtain, or use the data contained in such information;

(8) the term "Director" means the Director of the Office of Management and Budget;

(9) the term "directory of information resources" means a catalog of information collection requests, containing a data profile for each request;

(10) the term "independent regulatory agency" means the Board of Governors of the Federal Reserve System, the Civil Aeronautics Board, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Home Loan Bank Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

(11) the term "information collection request" means a written report form, application form, schedule, questionnaire, reporting or recordkeeping requirement, or other similar method calling for the collection of information;

(12) the term "information referral service" means the function that assists officials and persons in obtaining access to the Federal Information Locator System;

(13) the term "information systems" means management information systems;

(14) the term "person" means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, or local government or branch thereof, or a political subdivision of a State, territory, or local government or a branch of a political subdivision;

(15) the term "practical utility" means the ability of an agency to use information it collects, particularly the capability to process such information in a timely and useful fashion; and

(16) the term "recordkeeping requirement" means requirement imposed by an agency on persons to maintain specified records.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2813.)

§ 3503. Office of Information and Regulatory Affairs

(a) There is established in the Office of Management and Budget an office to be known as the Office of Information and Regulatory Affairs.

(b) There shall be at the head of the Office an Administrator who shall be appointed by, and who shall report directly to, the Director. The Director shall delegate to the Administrator the authority to administer all functions under this chapter, except that any such delegation shall not relieve the Director of responsibility for the administration of such functions. The Administrator shall serve as principal adviser to the Director on Federal information policy.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2814.)

§ 3504. Authority and functions of Director

(a) The Director shall develop and implement Federal information policies, principles, standards, and guidelines and shall provide direction and oversee the review and approval of information collection requests, the reduction of the paperwork burden, Federal statistical activities, records management activities, privacy of records, interagency sharing of information, and acquisition and use of automatic data processing telecommunications, and other technology for managing information resources. The authority under this section shall be exercised consistent with applicable law.

(b) The general information policy functions of the Director shall include—

(1) developing and implementing uniform and consistent information resources management policies and overseeing the development of information management principles, standards, and guidelines and promoting their use;

(2) initiating and reviewing proposals for changes in legislation, regulations, and agency procedures to improve information practices, and informing the President and the Congress on the progress made therein;

(3) coordinating, through the review of budget proposals and as otherwise provided in this section, agency information practices;

(4) promoting, through the use of the Federal Information Locator System, the review of budget proposals and other methods, greater sharing of information by agencies;

(5) evaluating agency information management practices to determine their adequacy and efficiency, and to determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director; and

(6) overseeing planning for, and conduct of research with respect to, Federal collection, processing, storage, transmission, and use of information.

(c) The information collection request clearance and other paperwork control functions of the Director shall include—

(1) reviewing and approving information collection requests proposed by agencies;

(2) determining whether the collection of information by an agency is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility for the agency;

(3) ensuring that all information collection requests—

(A) are inventoried, display a control number and, when appropriate, an expiration date;

(B) indicate the request is in accordance with the clearance requirements of section 3507; and

(C) contain a statement to inform the person receiving the request why the information is being collected, how it is to be used, and whether responses to the request are voluntary, required to obtain a benefit, or mandatory;

(4) designating as appropriate, in accordance with section 3509, a collection agency to obtain information for two or more agencies;

(5) setting goals for reduction of the burdens of Federal information collection requests;

(6) overseeing action on the recommendations of the Commission on Federal Paperwork; and

(7) designing and operating, in accordance with section 3511, the Federal Information Locator System.

(d) The statistical policy and coordination functions of the Director shall include—

(1) developing long range plans for the improved performance of Federal statistical activities and programs;

(2) coordinating, through the review of budget proposals and as otherwise provided in this section, the functions of the Federal Government with respect to gathering, interpreting, and disseminating statistics and statistical information;

(3) developing and implementing Government-wide policies, principles, standards, and guidelines concerning statistical collection procedures and methods, statistical data classifications, and statistical information presentation and dissemination; and

(4) evaluating statistical program performance and agency compliance with Government-wide policies, principles, standards, and guidelines.

(e) The records management functions of the Director shall include—

(1) providing advice and assistance to the Administrator of General Services in order to promote coordination in the administration of chapters 29, 31, and 33 of this title with the information policies, principles, standards, and guidelines established under this chapter;

(2) reviewing compliance by agencies with the requirements of chapters 29, 31, and 33 of this title and with regulations promulgated by the Administrator of General Services thereunder; and

(3) coordinating records management policies and programs with related information programs such as information collection, statistics, automatic data processing and telecommunications, and similar activities.

(f) The privacy functions of the Director shall include—

(1) developing and implementing policies, principles, standards, and guidelines on information disclosure and confidentiality, and on safeguarding the security of information collected or maintained by or on behalf of agencies;

(2) providing agencies with advice and guidance about information security, restriction, exchange, and disclosure; and

(3) monitoring compliance with section 552a of title 5, United States Code, and related information management laws.

(g) The Federal automatic data processing and telecommunications functions of the Director shall include—

(1) developing and implementing policies, principles, standards, and guidelines for automatic data processing and telecommunications functions and activities of the Federal Government, and overseeing the establishment of standards under section 111(f) of the Federal Property and Administrative Services Act of 1949;

(2) monitoring the effectiveness of, and compliance with, directives issued pursuant to sections 110 and 111 of such Act of 1949 and reviewing proposed determinations under section 111(g) of such Act;

(3) providing advice and guidance on the acquisition and use of automatic data processing and telecommunications equipment, and coordinating, through the review of budget proposals and other methods, agency proposals for acquisition and use of such equipment;

(4) promoting the use of automatic data processing and telecommunications equipment by the Federal Government to improve the effectiveness of the use and dissemination of data in the operation of Federal programs; and

(5) initiating and reviewing proposals for changes in legislation, regulations, and agency procedures to improve automatic data processing and telecommunications practices, and informing the President and the Congress of the progress made therein.

(h)(1) As soon as practicable, but no later than publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information requirement and upon request, information necessary to make the determination required pursuant to this section.

(2) Within sixty days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments pursuant to the standards set forth in section 3508 on the collection of information requirement contained in the proposed rule.

(3) When a final rule is published in the Federal Register, the agency shall explain how any collection of information requirement contained in the final rule responds to the comments, if any, filed by the Director or the public, or explain why it rejected those comments.

(4) The Director has no authority to disapprove any collection of information requirement specifically contained in an agency rule, if he has received notice and failed to comment on the rule within sixty days of the notice of proposed rulemaking.

(5) Nothing in this section prevents the Director, in his discretion—

(A) from disapproving any information collection request which was not specifically required by an agency rule;

(B) from disapproving any collection of information requirement contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection; or [1]

(C) from disapproving any collection of information requirement contained in a final agency rule, if the Director finds within sixty days of the publication of the final rule that the agency's response to his comments filed pursuant to paragraph (2) of this subsection was unreasonable.[2]

(D) from disapproving any collection of information requirement where the Director determines that the agency has substantially modified in the final rule the collection of information requirement contained in the proposed rule where the agency has not given the Director the information required in paragraph (1), with respect to the modified collection of information requirement, at least sixty days before the issuance of the final rule.

(6) The Director shall make publicly available any decision to disapprove a collection of information requirement contained in an agency rule, together with the reasons for such decision.

(7) The authority of the Director under this subsection is subject to the provisions of section 3507(c).

(8) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.

(9) There shall be no judicial review of any kind of the Director's decision to approve or not to act upon a collection of information requirement contained in an agency rule.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2815.)

§ 3505. Assignment of tasks and deadlines

In carrying out the functions under this chapter, the Director shall—

(1) upon enactment of this Act—

(A) set a goal to reduce the then existing burden of Federal collections of information by 15 per centum by October 1, 1982; and

(B) for the year following, set a goal to reduce the burden which existed upon enactment by an additional 10 per centum;

(2) within one year after the effective date of this Act—

(A) establish standards and requirements for agency audits of all major information systems and assign responsibility for conducting Government-wide or multiagency audits, except the Director shall not assign such responsibility for the audit of major information systems used for the conduct of criminal investigations or intelligence activities as defined in section 4-206 of Executive Order 12036, issued January 24, 1978, or successor orders, or for cryptologic activities that are communications security activities;

(B) establish the Federal Information Locator System;

(C) identify areas of duplication in information collection requests and develop a schedule and methods for eliminating duplication;

(D) develop a proposal to augment the Federal Information Locator System to include data profiles of major information holdings of agencies (used in the conduct of their operations) which are not otherwise required by this chapter to be included in the System; and

(E) identify initiatives which may achieve a 10 per centum reduction in the burden of Federal collections of information associated with the administration of Federal grant programs; and

(3) within two years after the effective date of this Act—

(A) establish a schedule and a management control system to ensure that practices and programs of information handling disciplines, including records management, are appropriately integrated with the information policies mandated by this chapter;

(B) identify initiatives to improve productivity in Federal operations using information processing technology;

(C) develop a program to (i) enforce Federal information processing standards, particularly software language standards, at all Federal installations; and (ii) revitalize the standards development program established pursuant to section 759(f)(2) of title 40, United States Code, separating it from peripheral technical assistance functions and directing it to the most productive areas;

(D) complete action on recommendations of the Commission on Federal Paperwork by implementing, implementing with modification or rejecting such recommendations including, where necessary, development of legislation to implement such recommendations;

(E) develop, in consultation with the Administrator of General Services, a five-year plan for meeting the automatic data processing and telecommunications needs of the Federal Government in accordance with the requirements of section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) and the purposes of this chapter; and

(F) submit to the President and the Congress legislative proposals to remove inconsistencies in laws and practices involving privacy, confidentiality, and disclosure of information.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2818.)

§ 3506. Federal agency responsibilities

(a) Each agency shall be responsible for carrying out its information management activities in an efficient, effective, and economical manner, and for complying with the information policies, principles, standards, and guidelines prescribed by the Director.

(b) The head of each agency shall designate, within three months after the effective date of this Act, a senior official or, in the case of military departments, and the Office of the Secretary of Defense, officials who report directly to such agency head to carry out the responsibilities of the agency under this chapter. If more than one official is appointed for the military departments the respective duties of the officials shall be clearly delineated.

(c) Each agency shall—

(1) systematically inventory its major information systems and periodically review its information management activities, including planning, budgeting, organizing, directing, training, promoting, controlling, and other managerial activities involving the collection, use, and dissemination of information;

(2) ensure its information systems do not overlap each other or duplicate the systems of other agencies;

(3) develop procedures for assessing the paperwork and reporting burden of proposed legislation affecting such agency;

(4) assign to the official designated under subsection (b) the responsibility for the conduct of and accountability for any acquisitions made pursuant to a delegation of authority under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759); and

(5) ensure that information collection requests required by law or to obtain a benefit, and submitted to nine or fewer persons, contain a statement to inform the person receiving the request that the request is not subject to the requirements of section 3507 of this chapter.

(d) The head of each agency shall establish such procedures as necessary to ensure the compliance of the agency with the requirements of the Federal Information Locator System, including necessary screening and compliance activities.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2819.)

§ 3507. Public information collection activities—submission to Director; approval and delegation

(a) An agency shall not conduct or sponsor the collection of information unless, in advance of the adoption or revision of the request for collection of such information—

(1) the agency has taken actions, including consultation with the Director, to—

(A) eliminate, through the use of the Federal Information Locator System and other means, information collections which seek to obtain information available from another source within the Federal Government;

(B) reduce to the extent practicable and appropriate the burden on persons who will provide information to the agency; and

(C) formulate plans for tabulating the information in a manner which will enhance its usefulness to other agencies and to the public;

(2) the agency (A) has submitted to the Director the proposed information collection request, copies of pertinent regulations and other related materials as the Director may specify, and an explanation of actions taken to carry out paragraph (1) of this subsection, and (B) has prepared a notice to be published in the Federal Register stating that the agency has made such submission; and

(3) the Director has approved the proposed information collection request, or the period for review of information collection requests by the Director provided under subsection (b) has elapsed.

(b) The Director shall, within sixty days of receipt of a proposed information collection request, notify the agency involved of the decision to approve or disapprove the request and shall make such decisions publicly available. If the Director determines that a request submitted for review cannot be reviewed within sixty days, the Director may, after notice to the agency involved, extend the review period for an additional thirty days. If the Director does not notify the agency of an extension, denial, or approval within sixty days (or, if the Director has extended the review period for an additional thirty days and does not notify the agency of a denial or approval within the time of the extension), a control number shall be assigned without further delay, the approval may be inferred, and the agency may collect the information for not more than one year.

(c) Any disapproval by the Director, in whole or in part, of a proposed information collection request of an independent regulatory agency, or an exercise of authority under section 3504(h) or 3509 concerning such an agency, may be voided, if the agency by a majority vote of its members overrides the Director's disapproval or exercise of authority. The agency shall certify each override to the Director, shall explain the reasons for exercising the override authority. Where the override concerns an information collection request, the Director shall without further delay assign a control number to such request, and such override shall be valid for a period of three years.

(d) The Director may not approve an information collection request for a period in excess of three years.

(e) If the Director finds that a senior official of an agency designated pursuant to section 3506(b) is sufficiently independent of program responsibility to evaluate fairly whether proposed information collection requests should be approved and has sufficient resources to carry out this responsibility effectively, the Director may, by rule in accordance with the notice and comment provisions of chapter 5 of title 5, United States Code, delegate to such official the authority to approve proposed requests in specific program areas, for specific purposes, or for all agency purposes. A delegation by the Director under this section shall not preclude the Director from reviewing individual information collection requests if the Director determines that circumstances warrant such a review. The Director shall retain authority to revoke such delegations, both in general and with regard to any specific matter. In acting for the Director, any official to whom approval authority has been delegated under this section shall comply fully with the rules and regulations promulgated by the Director.

(f) An agency shall not engage in a collection of information without obtaining from the Director a control number to be displayed upon the information collection request.

(g) If an agency head determines a collection of information (1) is needed prior to the expiration of the sixty-day period for the review of information collection requests established pursuant to subsection (b), (2) is essential to the mission of the agency, and (3) the agency cannot reasonably comply with the provisions of this chapter within such sixty-day period because (A) public harm will result if normal clearance procedures are followed, or (B) an unanticipated event has occurred and the use of normal clearance procedures will prevent or disrupt the collection of information related to the event or will cause a statutory deadline to be missed, the agency head may request the Director to authorize such collection of information prior to expiration of such sixty-day period. The Director shall approve or disapprove any such authorization request within the time requested by the agency head and, if approved, shall assign the information collection request a control number. Any collection of information conducted pursuant to this subsection may be conducted without compliance with the provisions of this chapter for a maximum of ninety days after the date on which the Director received the request to authorize such collection.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2819.)

§ 3508. Determination of necessity for information; hearing

Before approving a proposed information collection request, the Director shall determine whether the collection of information by an agency is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary, for any reason, the agency may not engage in the collection of the information.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2821.)

§ 3509. Designation of central collection agency

The Director may designate a central collection agency to obtain information for two or more agencies if the Director determines that the needs of such agencies for information will be adequately served by a single collection agency, and such sharing of data is not inconsistent with any applicable law. In such cases the Director shall prescribe (with reference to the collection of information) the duties and functions of the collection agency so designated and of the agencies for which it is to act as agent (including reimbursement for costs). While the designation is in effect, an agency covered by it may not obtain for itself information which it is the duty of the collection agency to obtain. The Director may modify the designation from time to time as circumstances require. The authority herein is subject to the provisions of section 3507(c) of this chapter.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2821.)

§ 3510. Cooperation of agencies in making information available

(a) The Director may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained pursuant to an information collection request if the disclosure is not inconsistent with any applicable law.

(b) If information obtained by an agency is released by that agency to another agency, all the provisions of law (including penalties which relate to the unlawful disclosure of information) apply to the officers and employees of the agency to which information is released to the same extent and in the same manner as the provisions apply to the officers and employees of the agency which originally obtained the information. The officers and employees of the agency to which the information is released, in addition, shall be subject to the same provisions of law, including penalties, relating to the unlawful disclosure of information as if the information had been collected directly by that agency.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2822.)

§ 3511. Establishment and operation of Federal Information Locator System

(a) There is established in the Office of Information and Regulatory Affairs a Federal Information Locator System (hereafter in this section referred to as the "System") which shall be composed of a directory of information resources, a data element dictionary, and an information referral service. The System shall serve as the authoritative register of all information collection requests.

(b) In designing and operating the System, the Director shall—

(1) design and operate an indexing system for the System;

(2) require the head of each agency to prepare in a form specified by the Director, and to submit to the Director for inclusion in the System, a data profile for each information collection request of such agency;

(3) compare data profiles for proposed information collection requests against existing profiles in the System, and make available the results of such comparison to—

(A) agency officials who are planning new information collection activities; and

(B) on request, members of the general public; and

(4) ensure that no actual data, except descriptive data profiles necessary to identify duplicative data or to locate information, are contained within the System.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2822.)

§ 3512. Public protection

Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved was made after December 31, 1981, and does not display a current control number assigned by the Director, or fails to state that such request is not subject to this chapter.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2822.)

§ 3513. Director review of agency activities; reporting; agency response

(a) The Director shall, with the advice and assistance of the Administrator of General Services, selectively review, at least once every three years, the information management activities of each agency to ascertain their adequacy and efficiency. In evaluating the adequacy and efficiency of such activities, the Director shall pay particular attention to whether the agency has complied with section 3506.

(b) The Director shall report the results of the reviews to the appropriate agency head, the House Committee on Government Operations, the Senate Committee on Governmental Affairs, the House and Senate Committees on Appropriations, and the committees of the Congress having jurisdiction over legislation relating to the operations of the agency involved.

(c) Each agency which receives a report pursuant to subsection (b) shall, within sixty days after receipt of such report, prepare and transmit to the Director, the House Committee on Government Operations, the Senate Committee on Governmental Affairs, the House and Senate Committees on Appropriations, and the committees of the Congress having jurisdiction over legislation relating to the operations of the agency, a written statement responding to the Director's report, including a description of any measures taken to alleviate or remove any problems or deficiencies identified in such report.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2822.)

§ 3514. Responsiveness to Congress

(a) The Director shall keep the Congress and its committees fully and currently informed of the major activities under this chapter, and shall submit a report thereon to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as the Director determines necessary. The Director shall include in any such report—

(1) proposals for legislative action needed to improve Federal information management, including, with respect to information collection, recommendations to reduce the burden on individuals, small businesses, State and local governments, and other persons;

(2) a compilation of legislative impediments to the collection of information which the Director concludes that an agency needs but does not have authority to collect;

(3) an analysis by agency, and by categories the Director finds useful and practicable, describing the estimated reporting hours required of persons by information collection requests, including to the extent practicable the direct budgetary costs of the agencies and identification of statutes and regulations which impose the greatest number of reporting hours;

(4) a summary of accomplishments and planned initiatives to reduce burdens of Federal information collection requests;

(5) a tabulation of areas of duplication in agency information collection requests identified during the preceding year and efforts made to preclude the collection of duplicate information, including designations of central collection agencies;

(6) a list of each instance in which an agency engaged in the collection of information under the authority of section 3507(g) and an identification of each agency involved;

(7) a list of all violations of provisions of this chapter and rules, regulations, guidelines, policies, and procedures issued pursuant to this chapter; and

(8) with respect to recommendations of the Commission on Federal Paperwork—

(A) a description of the specific actions taken on or planned for each recommendation;

(B) a target date for implementing each recommendation accepted but not implemented; and

(C) an explanation of the reasons for any delay in completing action on such recommendations.

(b) The preparation of any report required by this section shall not increase the collection of information burden on persons outside the Federal Government.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2823.)

§ 3515. Administrative powers

Upon the request of the Director, each agency (other than an independent regulatory agency) shall, to the extent practicable, make its services, personnel, and facilities available to the Director for the performance of functions under this chapter.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2824.)

§ 3516. Rules and regulations

The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2824.)

§ 3517. Consultation with other agencies and the public

In development of information policies, plans, rules, regulations, procedures, and guidelines and in reviewing information collection requests, the Director shall provide interested agencies and persons early and meaningful opportunity to comment.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2824.)

§ 3518. Effect on existing laws and regulations

(a) Except as otherwise provided in this chapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information activities is subject to the authority conferred on the Director by this chapter.

(b) Nothing in this chapter shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order, relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

(c)(1) Except as provided in paragraph (2), this chapter does not apply to the collection of information—

(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

(B) during the conduct of (i) a civil action to which the United States or any official or agency thereof is a party or (ii) an administrative action or investigation involving an agency against specific individuals or entities;

(C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

(D) during the conduct of intelligence activities as defined in section 4-206 of Executive Order 12036, issued January 24, 1978, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

(2) This chapter applies to the collection of information during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

(d) Nothing in this chapter shall be interpreted as increasing or decreasing the authority conferred by Public Law 89-306 on the Administrator of the General Services Administration, the Secretary of Commerce, or the Director of the Office of Management and Budget.

(e) Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2824.)

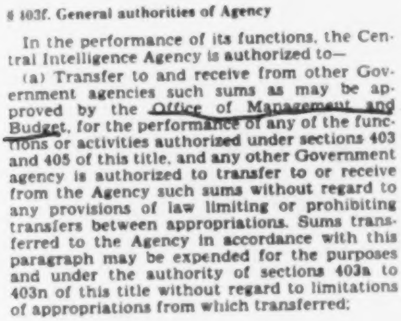
§ 3519. Access to information

Under the conditions and procedures prescribed in section 716 of title 31, the Director and personnel in the Office of Information and Regulatory Affairs shall furnish such information as the Comptroller General may require for the discharge of his responsibilities. For this purpose, the Comptroller General or representatives thereof shall have access to all books, documents, papers and records of the Office.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2825, and amended Pub. L. 97-258, § 3(m)(3), Sept. 13, 1982, 96 Stat. 1066.)

89. 50 U.S.C. 403f(a)

OMB approves the transfer and receipt of monies from the CIA to other agencies and from other agencies to the CIA.



§ 403f. General authorities of Agency

In the performance of its functions, the Central Intelligence Agency is authorized to—

(a) Transfer to and receive from other Government agencies such sums as may be approved by the Office of Management and Budget, for the performance of any of the functions or activities authorized under sections 403 and 405 of this title, and any other Government agency is authorized to transfer to or receive from the Agency such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations. Sums transferred to the Agency in accordance with this paragraph may be expended for the purposes and under the authority of sections 403a to 403n of this title without regard to limitations of appropriations from which transferred;

90. 50 U.S.C. 403g

OMB is enjoined from making any reports with respect to the CIA to Congress.

§ 403g. Protection of nature of Agency's functions

In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403(d)(3) of this title that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of sections 1 and 2 of the Act of August 28, 1935 (49 Stat. 956, 957; 5 U.S.C. 654), and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency: *Provided*, That in furtherance of this section, the Director of the Office of Management and Budget shall make no reports to the Congress in connection with the Agency under section 607 of the Act of June 30, 1945, as amended (5 U.S.C. 947(b)).

(June 20, 1949, ch. 227, § 6, formerly § 7, 63 Stat. 211, renumbered July 7, 1958, Pub. L. 85-507, § 21(b)(2), 72 Stat. 337, and amended 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

91. 50 U.S.C. Appendix 2095(g)(4)

OMB must certify that appropriations have been made for the purpose of contracting for the purchase of synthetic fuel.

§ 2095. Synthetic fuel production

* * *

(g) Maximum liability of Federal Government under contracts; budgetary certifications

* * *

(4) Any such contract shall be accompanied by a certification by the Director of the Office of Management and Budget that the necessary appropriations have been made for the purpose of such contract and are available. The remaining available and unencumbered appropriations shall equal the total aggregate appropriations less the aggregate maximum liability of the Federal Government under all contracts pursuant to this section.

92. 50 U.S.C. Appendix 2096(h)(4)

After a presidential determination of a national energy supply shortage, OMB must certify that appropriations have been made for the purpose of contracting for the purchase of synthetic fuel.

§ 2096. Synthetic fuel production subsequent to determinations respecting a national energy supply shortage of defense fuels

* * *

(h) Maximum liability of Federal Government under contracts; budgetary certifications

* * *

(4) Any such contract shall be accompanied by a certification by the Director of the Office of Management and Budget that the necessary appropriations have been made for the purpose of such contract and are available. The remaining available and unencumbered appropriations shall equal the total aggregate appropriations less the aggregate maximum liability of the Federal Government under all contracts pursuant to this section.

93. Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99-177, 99th Cong., 1st Sess. (1985).

The Act provides for annual reductions in the budget deficit and establishes procedures to reduce deficits to specified annual maximum levels through mandatory sequestration of funds. The amount of reductions is to be determined by the Comptroller General on the basis of a joint report prepared by OMB and the Congressional Budget Office (CBO) estimating the fiscal year's deficit, expected economic conditions, and the budget bases of accounts and programs. If the OMB and CBO directors cannot agree on common estimates, they are to average their estimates for purposes of the deficit reduction process. The OMB/CBO report is also required to make estimates for each non-defense account and for each defense program, project an activity, the base from which reductions are to be taken, and the percentages by which reductions are to be made to lower the estimated deficit to the maximum level.

PART C—EMERGENCY POWERS TO ELIMINATE DEFICITS IN EXCESS OF MAXIMUM DEFICIT AMOUNT

SEC. 251. REPORTING OF EXCESS DEFICITS.

(a) INITIAL ESTIMATES, DETERMINATIONS, AND REPORT BY OMB AND CBO.—

(1) ESTIMATES AND DETERMINATIONS.—The Director of the Office of Management and Budget and the Director of the Congressional Budget Office (in this part referred to as the "Directors") shall with respect to each fiscal year—

(A) estimate the budget base levels of total revenues and budget outlays that may be anticipated for such fiscal year as of August 15 of the calendar year in which such fiscal year begins (or as of January 10, 1986, in the case of the fiscal year 1986),

(B) determine whether the projected deficit for such fiscal year will exceed the maximum deficit amount for such fiscal year and whether such deficit excess will be greater than $10,000,000,000 (zero in the case of fiscal years 1986 and 1991), and

(C) estimate the rate of real economic growth that will occur during such fiscal year, the rate of real economic growth that will occur during each quarter of such fiscal year, and the rate of real economic growth that will have occurred during each of the last two quarters of the preceding fiscal year.

(2) REPORT.—The Directors jointly shall report to the Comptroller General on August 20 of the calendar year in which such fiscal year begins (or on January 15, 1986, in the case of the fiscal year 1986), estimating the budget base levels of total revenues and total budget outlays for such fiscal year, identifying the amount of any deficit excess for such fiscal year, stating whether such excess is greater than $10,000,000,000 (zero in the case of fiscal years 1986 and 1991), specifying the estimated rate of real economic growth for such fiscal year, for each quarter of such fiscal year, and for each of the last two quarters of the preceding fiscal year, indicating whether the estimate includes two or more consecutive quarters of negative real economic growth, and specifying (if the excess is greater than $10,000,000,000, or zero in the case of fiscal years 1986 and 1991), by account, for non-defense programs, and by account and programs, projects, and activities within each account, for defense programs, the base from which reductions are taken and the amounts and percentages by which such accounts must be reduced during such fiscal year, in accordance with the succeeding provisions of this part, in order to eliminate such excess.

(3) DETERMINATION OF REDUCTIONS.—The amounts and percentages by which such accounts must be reduced during a fiscal year shall be determined as follows:

(A)(i) If the deficit excess for the fiscal year is greater than $10,000,000,000 (zero in the case of fiscal years 1986 and 1991), such deficit excess shall be divided into halves.

(ii) In the case of fiscal year 1986, the amount of such excess—

(I) shall be multiplied by seven-twelfths before being divided into halves in accordance with clause (i), and

(II) shall not exceed $11,700,000,000.

(B) Subject to the exemptions, exceptions, limitations, special rules, and definitions set forth in this section and in sections 255, 256, and 257, the reductions necessary to eliminate one-half of the deficit excess for the fiscal year (as adjusted under subparagraph (A)(ii) in the case of fiscal year 1986) shall be made in outlays under accounts within major functional category 050 (in this part referred to as outlays under "defense programs"), and the reductions necessary to eliminate the other half of the deficit excess (or the adjusted deficit excess, in the case of fiscal year 1986) shall be made in outlays under other accounts of the Federal Government (in this part referred to as outlays under "non-defense programs").

(C)(i) The total amount by which outlays for automatic spending increases scheduled to take effect during the fiscal year are to be reduced shall be determined in accordance with clause (ii) of this subparagraph.

(ii) Each such automatic spending increase shall be reduced—

(I) to zero (a uniform percentage reduction of 100 percent), or

(II) by a uniform percentage reduction of less than 100 percent calculated in a manner to reduce total outlays for the fiscal year by one-half of the deficit excess (or the adjusted deficit excess, in the case of fiscal year 1986), if the elimination of all such increases would reduce total outlays for the fiscal year by more than one-half of the deficit excess (or the adjusted deficit excess, in the case of fiscal year 1986) for the fiscal year.

(D) The total amount of the outlay reductions determined under subparagraph (C) shall be divided into two amounts:

(i) an amount equal to the outlay reductions attributable to programs specified in subparagraph (A) of section 257(1); and

(ii) an amount equal to the outlay reductions attributable to programs specified in subparagraph (B) of section 257(1).

(E)(i) For purposes of subparagraph (B), one-half of the amount of the reductions determined under clause (i) of subparagraph (D) shall be credited as reductions in outlays under defense programs, and the total amount of reductions in outlays under defense programs required under subparagraph (B) shall be reduced accordingly.

(ii) Sequestration of new budget authority and unobligated balances to achieve the remaining reductions in outlays under defense programs required under subparagraph (B) shall be determined as provided in subsection (d).

(F)(i) For purposes of subparagraph (B)—

(I) one-half of the amount of the reductions determined under clause (i) of subparagraph (D), and

(II) the amount of the reductions determined under clause (ii) of subparagraph (D),

shall be credited as reductions in outlays under non-defense programs, and the total amount of reductions in outlays under non-defense programs required under subparagraph (B) shall be reduced accordingly.

(ii) The maximum reduction permissible for each program to which an exception, limitation, or special rule set forth in subsection (c) or (f) of section 256 applies shall be determined, and the total amount of reductions in outlays under non-defense programs required under subparagraph (B) shall be reduced by the amount of the reduction determined with respect to each such program.

(iii)(I) Except as provided in subclause (II), the maximum reduction permissible for each of the programs to which the special rules set forth in sections 256(d) and 256(k) apply shall be determined, and the total amount of outlays under non-defense programs required under subparagraph (B) shall be reduced by the amount of the maximum reductions so determined.

(II) If the maximum reduction determined in accordance with subclause (I) with respect to the programs to which that subclause relates would reduce outlays for such programs by an amount in excess of the remaining amount of the reduction in outlays in non-defense programs required under subparagraph (B), outlays for such programs shall instead be reduced proportionately by such lesser percentage as will achieve such remaining required reductions.

(iv)(I) Sequestrations and reductions under the remaining non-defense programs shall be applied on a uniform percentage basis so as to reduce new budget authority, new loan guarantee commitments, new direct loan obligations, obligation limitations, and spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974 to the extent necessary to achieve any remaining required outlay reductions.

(II) For purposes of determining reductions under subclause (I), any reduction in outlays of the Commodity Credit Corporation under an order issued by the President under section 252 for a fiscal year, with respect to contracts entered into during that fiscal year, that will occur during the succeeding fiscal year, shall be credited as reductions in outlays for the fiscal year in which the order is issued.

The determination of which accounts are within major functional category 050 and which are not, for purposes of subparagraph (B), shall be made by the Directors in a manner consistent with the budget submitted by the President for the fiscal year 1986; except that for such purposes no part of the accounts entitled "Federal Emergency Management Agency, Salaries and expenses (58–0100–0–1–999)" and "Federal Emergency Management Agency, Emergency management planning and assistance (58–0101–01–999)" shall be treated as being within functional category 050.

(4) ADDITIONAL SPECIFICATIONS.—The report submitted under paragraph (2) must also specify (with respect to the fiscal year involved)—

(A) the amount of the automatic spending increase (if any) which is scheduled to take effect in the case of each program providing for such increases, the amount and percentage by which such increase is to be reduced, the amount by which the deficit excess (as adjusted under paragraph (3)(A)(ii), in the case of fiscal year 1986) will be reduced as a result of the elimination or reduction of automatic spending increases (stated separately for increases under programs listed in subparagraph (A) of section 257(1) and increases under programs listed in subparagraph (B) of that section), and the amount (if any) of each such increase, stated in terms of percentage points, which will take effect after reduction under this part;

(B) the amount of the savings (if any) to be achieved in the application of each of the special rules set forth in subsections (c) through (i) of section 256, along with a statement of (i) the new Federal matching rate resulting from the application of subsection (e) of that section, and (ii) the amount of the percentage reduction in payments to the States under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970; and

(C)(i) for defense programs, by account and by program, project, and activity within each account, the reduction (stated in terms of both percentage and amount) in new budget authority and unobligated balances, together with the estimated outlay reductions resulting therefrom; and

(ii) for non-defense programs, by account, the reduction, stated in terms of both percentage and amount, in new budget authority, new loan guarantee commitments, new direct loan obligations, obligation limitations, and spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, together with the estimated outlay reductions resulting therefrom.

(5) BASIS FOR DIRECTORS' ESTIMATES, DETERMINATIONS, AND SPECIFICATIONS.—The estimates, determinations, and specifications of the Directors under the preceding provisions of this subsection and under subsection (c)(1) shall utilize the budget base, criteria, and guidelines set forth in paragraph (6) and in sections 255, 256, and 257. In the event that the Directors are unable to agree on any items required to be set forth in the report, they shall average their differences to the extent necessary to produce a single, consistent set of data that achieves the required deficit reduction. The report of the Directors shall also indicate the amount initially proposed for each averaged item by each Director.

(6) BUDGET BASE.—In computing the amounts and percentages by which accounts must be reduced during a fiscal year as set forth in any report required under this subsection for such fiscal year, the budget base shall be determined by—

(A) assuming (subject to subparagraph (C)) the continuation of current law in the case of revenues and spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974;

(B) assuming, in the case of all accounts to which subparagraph (A) does not apply, appropriations equal to the prior year's appropriations except to the extent that annual appropriations or continuing appropriations for the entire fiscal year have been enacted;

(C) assuming that expiring provisions of law providing revenues and spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974 do expire, except that excise taxes dedicated to a trust fund and agricultural price support programs administered through the Commodity Credit Corporation are extended at current rates; and

(D) assuming (i) that Federal pay adjustments for statutory pay systems (I) will be as recommended by the President, but (II) will in no case result in a reduction in the levels of pay in effect immediately before such adjustments; and (ii) that medicare spending levels for inpatient hospital services will be based upon the regulations most recently issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act.

Deferrals proposed under section 1013 of the Impoundment Control Act of 1974 during the period beginning October 1 of such fiscal year (or the date of the enactment of this joint resolution in the case of fiscal year 1986) and ending with the date on which the final order is issued under section 252(b) for such fiscal year (or February 1, 1986, in the case of fiscal year 1986) shall not be taken into account in determining such budget base.

(b) REPORT TO PRESIDENT AND CONGRESS BY COMPTROLLER GENERAL.—

(1) REPORT TO BE BASED ON OMB-CBO REPORT.—The Comptroller General shall review and consider the report issued by the Directors for the fiscal year and, with due regard for the data, assumptions, and methodologies used in reaching the conclusions set forth therein, shall issue a report to the President and the Congress on August 25 of the calendar year in which such fiscal year begins (or on January 20, 1986, in the case of the fiscal year 1986), estimating the budget base levels of total revenues and total budget outlays for such fiscal year, identifying the amount of any deficit excess for such fiscal year (adjusted in accordance with subsection (a)(3)(A)(iii), in the case of fiscal year 1986), stating whether such deficit excess (or adjusted deficit excess, in the case of fiscal year 1986) will be greater than $10,000,000,000 (zero in the case of fiscal years 1986 and 1991), specifying the estimated rate of real economic growth for such fiscal year, for each quarter of such fiscal year, and for each of the last two quarters of the preceding fiscal year, indicating whether the estimate includes two or more consecutive quarters of negative economic growth, and specifying (if the excess is greater than $10,000,000,000, or zero in the case of fiscal years 1986 and 1991), by account, for non-defense programs, and by account and programs, projects, and activities within each account, for defense programs, the base from which reductions are taken and the amounts and percentages by which such accounts must be reduced during such fiscal year in order to eliminate such deficit excess (or adjusted deficit excess, in the case of fiscal year 1986). Such report shall be based on the estimates, determinations, and specifications of the Directors and shall utilize the budget base, criteria, and guidelines set forth in subsection (a)(6) and in sections 255, 256, and 257.

(2) CONTENTS OF REPORT.—The report of the Comptroller General under this subsection shall—

(A) provide for the determination of reductions in the manner specified in subsection (a)(3); and

(B) contain estimates, determinations, and specifications for all of the items contained in the report submitted by the Directors under subsection (a).

Such report shall explain fully any differences between the contents of such report and the report of the Directors.

(c) REVISED ESTIMATES, DETERMINATIONS, AND REPORTS.—

(1) REPORT BY OMB AND CBO.—On October 5 of the fiscal year (except in the case of the fiscal year 1986), the Directors shall submit to the Comptroller General a revised report—

(A) indicating whether and to what extent, as a result of laws enacted and regulations promulgated after the submission of their initial report under subsection (a), the excess deficit (adjusted in accordance with subsection (a)(3)(A)(iii), in the case of fiscal year 1986) identified in the report submitted under such subsection has been eliminated, reduced, or increased, and

(B) adjusting the determinations made under subsection (a) to the extent necessary.

The revised report submitted under this paragraph shall contain estimates, determinations, and specifications for all of the items contained in the initial report and authorized under subsection (a)(3)(D)(i) and shall be based on the same economic and technical assumptions, employ the same methodologies, and utilize the same definition of the budget base and the same criteria and guidelines as those used in the report submitted by the Directors under subsection (a) (except that subdivision (II) of paragraph (3)(D)(i) of such subsection shall not apply), and shall provide for the determination of reductions in the manner specified in subsection (a)(3).

94. 5 U.S.C. 5911(f)

Under E.O. 11,609 the President delegated his authority to issue regulations relating to the provision, occupancy and availability of quarters and facilities to OMB.

§ 5911. Quarters and facilities; employees in the United States

* * *

(f) The President may prescribe regulations governing the provision, occupancy, and availability of quarters and facilities, the determination of rates and charges therefor, and other related matters, necessary and appropriate to carry out this section. The head of each agency may prescribe regulations, not inconsistent with the regulations of the President, necessary and appropriate to carry out the functions of the agency head under this section.

Part II

Executive Orders

Presidential executive orders are a significant source of operational authority for OMB. Under 3 U.S.C. 301 the President is authorized to delegate statutory functions vested in him by congressional enactment. In addition, as chief executive officer under article II, sec. 1 of the Constitution, the President has a broad, undefined, authority to manage the executive bureaucracy, which task he has sought to accomplish through delegations of management responsibiliities to various executive branch officials. The most common vehicle for both types of delegations has been executive orders. Following is a compilation, in chronological order, of currently effective executive orders which have vested some function or authority in OMB. A brief explanatory introduction is provided for each order. In all instances the text relevant to the OMB function or authority is provided. Where appropriate, the entire order is set forth.

1. E.O. 8248

Reorganization Plan No. 1 of 1939, 53 Stat. 1423, established the Executive Office of the President and transferred the Bureau of the Budget (BoB) there from the Department of the Treasury. The President implemented the transfer by E.O. 8248 which assigned BoB specific functions and duties.

Executive Order 8248—Establishing the divisions of the Executive Office of the President and defining their functions and duties

SOURCE: The provisions of Executive Order 8248 of Sept. 8, 1939, appear at 4 FR 3864, 3 CFR, 1938–1943 Comp., p. 576, unless otherwise noted.

By virtue of the authority vested in me by the Constitution and Statutes, and in order to effectuate the purposes of the Reorganization Act of 1939, Public No. 19, Seventy-sixth Congress, approved April 3, 1939, and of Reorganization Plans Nos. I and II submitted to the Congress by the President and made effective as of July 1, 1939 by Public Resolution No. 2, Seventy-sixth Congress, approved June 7, 1939, by organizing the Executive Office of the President with functions and duties so prescribed and responsibilities so fixed that the President will have adequate machinery for the administrative management of the Executive branch of the Government, it is hereby ordered as follows:

I

There shall be within the Executive Office of the President the following principal divisions, namely: (1) The White House Office, (2) the Bureau of the Budget,[1] (3) the National Resources Planning Board,[2] (4) the Office of Government Reports,[3] and (5) in the event of a national emergency, or threat of a national emergency, such office for emergency management as the President shall determine.

[Part I amended by EO 10452 of May 1, 1953, 18 FR 2599, 3 CFR, 1949–1953 Comp., p. 940]

II

* * *

2. *The Bureau of the Budget.*—(a) To assist the President in the preparation of the Budget and the formulation of the fiscal program of the Government.

(b) To supervise and control the administration of the Budget.

(c) To conduct research in the development of improved plans of administrative management, and to advise the executive departments and agencies of the Government with respect to improved administrative organization and practice.

(d) To aid the President to bring about more efficient and economical conduct of Government service.

(e) To assist the President by clearing and coordinating departmental advice on proposed legislation and by making recommendations as to Presidential action on legislative enactments, in accordance with past practice.

(f) To assist in the consideration and clearance and, where necessary, in the preparation of proposed Executive orders and proclamations, in accordance with the provisions of Executive Order No. 7298 of February 18, 1936.

(g) To plan and promote the improvement, development, and coordination of Federal and other statistical services.

(h) To keep the President informed of the progress of activities by agencies of the Government with respect to work proposed, work actually initiated, and work completed, together with the relative timing of work between the several agencies of the Government; all to the end that the work programs of the several agencies of the Executive branch of the Government may be coordinated and that the monies appropriated by the Congress may be expended in the most economical manner possible with the least possible overlapping and duplication of effort.

* * *

III

The Bureau of the Budget and the National Resources Planning Board shall constitute the two principal management arms of the Government for the (1) preparation and administration of Budget and improvement of administrative management and organization and (2) planning for conservation and utilization of the resources of the Nation, none of which belongs in any department but which are necessary for the over-all management of the Executive branch of the Government, so that the President will be enabled the better to carry out his Constitutional duties of informing the Congress with respect to the state of the Union, of recommending appropriate and expedient measures, and of seeing that the laws are faithfully executed.

[Part III amended by EO 10452 of May 1, 1953, 18 FR 2599, 3 CFR, 1949-1953 Comp., p. 940]

IV

To facilitate the orderly transaction of business within each of the four divisions herein defined and to clarify the relations of these divisions with each other and with the President, I direct that the Bureau of the Budget, the National Resources Planning Board, and the Office of Government Reports shall respectively prepare regulations for the governance of their internal organizations and procedures. Such regulations shall be in effect when approved by the President and shall remain in force until changed by new regulations approved by him. The President will prescribe regulations governing the conduct of the business of the division of The White House Office.

[Part IV amended by EO 10452 of May 1, 1953, 18 FR 2599, 3 CFR, 1949-1953 Comp., p. 940]

* * *

V

The Director of the Bureau of the Budget shall prepare a consolidated budget for the Executive Office of the President for submission by the President to the Congress. Annually, pursuant to the regular request issued by the Bureau of the Budget, each division of the Executive Office of the President shall prepare and submit to the Bureau estimates of proposed appropriations for the succeeding fiscal year. The form of the estimates and the manner of their consideration for incorporation in the Budget shall be the same as prescribed for other Executive departments and agencies.

The Bureau of the Budget shall likewise perform with respect to the several divisions of the Executive Office of the President such functions and duties relating to supplemental estimates, apportionments, and budget administration as are exercised by it for other agencies of the Federal Government.

* * *

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[1] EDITORIAL NOTE: The Bureau of the Budget was reorganized and designated as the Office of Management and Budget by Reorganization Plan No. 2 of 1970, 35 FR 7959, 3 CFR, 1966–1970 Comp., p. 1070, effective July 1, 1970.

[2] EDITORIAL NOTE: The National Resources Planning Board was terminated by act approved June 26, 1943 (57 Stat. 169: 5 U.S.C. 133 nt.), effective Aug. 31, 1943.

[3] EDITORIAL NOTE: The Office of Government Reports was consolidated into the Office of War Information in the Office for Emergency Management by EO 9182 of June 13, 1942. The Office was reestablished within the Executive Office of the President by EO 9809 of Dec. 12, 1946. The Office was terminated on June 30, 1948.

2. E.O. 10,033

The Director of OMB determines what statistical information shall be provided to any international organization of which the United States is a member and which agency shall provide it.

Executive Order 10033—Regulations governing the providing of statistical information to intergovernmental organizations

SOURCE: The provisions of Executive Order 10033 of Feb. 8, 1949, appear at 14 FR 561, 3 CFR, 1949–1953 Comp., p. 226, unless otherwise noted.

WHEREAS the United Nations and other intergovernmental organizations of which the United states is a member have need for statistical information which can be supplied by the Government of the United States; and

WHEREAS the burden imposed on this Government in connection with providing such information to such organizations should be the minimum compatible with adequacy of information; and

WHEREAS a systematic procedure for furnishing such information will conserve effort and improve the quality and comparability of the data furnished:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and the statutes, including section 8 of the Bretton Woods Agreements Act (59 Stat. 515; 22 U.S.C. 286f), and as President of the United States, it is hereby ordered as follows:

SECTION 1. Except as provided in section 2 hereof, the Director of the Office of Management and Budget, hereinafter referred to as the Director, (a) shall determine, with the concurrence of the Secretary of State, what statistical information shall be provided in response to official requests received by the United States Government from any intergovernmental organization of which this country is a member, and (b) shall determine which Federal executive agency or agencies shall prepare the statistical information thus to be provided. The statistical information so prepared shall be transmitted to the requesting intergovernmental organization through established channels by the Secretary of State or by any Federal executive agency now or hereafter authorized by the Secretary of State to transmit such information.

[Sec. 1 amended by EO 12013 of Oct. 7, 1977, 42 FR 54931, 3 CFR, 1977 Comp., p. 147; EO 12318 of Aug. 21, 1981, 46 FR 42833, 3 CFR, 1981 Comp., p. 173]

SEC. 2. (a) The National Advisory Council on International Monetary and Financial Policies, hereinafter referred to as the National Advisory Council, shall determine, after consultation with the Director, what information is essential in order that the United States Government may comply with official requests for information received from the International Monetary Fund or the International Bank for Reconstruction and Development.

(b) The Director shall determine which Federal executive agency or agencies shall collect or make available information found essential under section 2(a) hereof.

(c) In the collection of information pursuant to a determination made by the Director under section 2(b) hereof in response to a request under article VIII, section 5, of the Articles of Agreement of the International Monetary Fund, the authority conferred on the President by section 8 of the Bretton Woods Agreements Act to require any person to furnish such information, by subpoena or otherwise, may be exercised by each of the following-named agencies:

Department of Agriculture
Department of Commerce

Department of the Interior
Department of Labor
Department of the Treasury
Board of Governors of the Federal Reserve System
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Power Commission[1]
Federal Trade Commission
Interstate Commerce Commission
Securities and Exchange Commission
United States Maritime Commission
United States Tariff Commission[2]

(d) The information collected or made available under section 2 of this order shall be submitted to the National Advisory Council for review and for presentation to the said Fund or Bank.

(e) As used in this order, the word "person" means an individual, partnership, corporation, or association.

[Sec. 2 amended by EO 11269 of Feb. 14, 1966, 31 FR 2313, 3 CFR, 1966–1970 Comp., p. 534; EO 12013 of Oct. 7, 1977, 42 FR 54931, 3 CFR, 1977 Comp., p. 147; EO 12318 of Aug. 21, 1981, 46 FR 42833, 3 CFR, 1981 Comp., p. 173]

SEC. 3. The Director's determination of any matter under section 1 or section 2 (b) of this order shall be made after consulting appropriate Federal executive agencies and giving due consideration to any responsibility now exercised by any of them in relation to an intergovernmental organization.

[Sec. 3 amended by EO 12013 of Oct. 7, 1977, 42 FR 54931, 3 CFR, 1977 Comp., p. 147; EO 12318 of Aug. 21, 1981, 46 FR 42833, 3 CFR, 1981 Comp., p. 173]

SEC. 4. This order shall not be construed to authorize the Director or the National Advisory Council to provide, or to require any Federal executive agency to provide, to an intergovernmental organization (a) information during any period of time when the agency having primary responsibility for security of the specified information declares that it must be withheld from the intergovernmental organization in the interest of military security, or (b) information which any Federal executive agency is required by law to maintain on a confidential basis.

[Sec. 4 amended by EO 12013 of Oct. 7, 1977, 42 FR 54931, 3 CFR, 1977 Comp., p. 147; EO 12318 of Aug. 21, 1981, 46 FR 42833, 3 CFR, 1981 Comp., p. 173]

SEC. 5. The Director and the National Advisory Council are authorized to prescribe such regulations as may be necessary to carry out their respective responsibilities under this order.

[Sec. 5 amended by EO 12013 of Oct. 7, 1977, 42 FR 54931, 3 CFR, 1977 Comp., p. 147; EO 12318 of Aug. 21, 1981, 46 FR 42833, 3 CFR, 1981 Comp., p. 173]

SEC. 6. To the extent that this order conflicts with any previous Executive order, the provisions of this order shall control.

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[1] EDITORIAL NOTE: The Federal Power Commission was terminated and its functions transferred to the Department of Energy by Pub. L. 95–91 (91 Stat. 565, 42 U.S.C. 7101 nt.), effective Oct. 1, 1977.

[2] EDITORIAL NOTE: Redesignated as the United States International Trade Commission by Pub. L. 93–618 (88 Stat. 1978, 19 U.S.C. 2231).

3. E.O. 10,253

Provides OMB with authority to manage and control the gathering, compiling, analyzing, and publishing of statistical information by Federal agencies. OMB generated statistical compilations are often the statutory reference point for a number of benefit and grant programs. See, e.g., 29 U.S.C. 213, 42 U.S.C., 300e-1, 42 U.S.C. 3001, 42 U.S.C. 1-2, 42 U.S.C. 1395ww, 42 U.S.C. 3338, 42 U.S.C. 5302 (referencing OMB's statistical determinations of Standard Statistical Metropolitan Areas (SSMA's)); and 29 U.S.C. 1503, 29 U.S.C. 1601, 29 U.S.C. 1602, 42 U.S.C. 701, 42 U.S.C. 1758, 42 U.S.C. 2971d, 42 U.S.C. 5302, 42 U.S.C. 6862, 42 U.S.C. 8622, 42 U.S.C. 9847, 42 U.S.C.9902 (referencing OMB's determination of poverty line level).

Executive Order 10253—Providing for the improvement of the work of Federal executive agencies with respect to statistical information

SOURCE: The provisions of Executive Order 10253 of June 11, 1951, appear at 16 FR 5605, 3 CFR, 1949-1953 Comp., p. 758, unless otherwise noted.

By virtue of the authority vested in me by Section 103 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 18b), and as President of the United States, and in order to carry out the purposes of said section, it is hereby ordered as follows:

SECTION 1. The Director of the Office of Management and Budget (hereinafter referred to as the Director) shall develop programs, and issue regulations and orders, for the improved gathering, compiling, analyzing, publishing, and disseminating of statistical information for any purpose by the various agencies in the executive branch of the Federal Government.

[Sec. 1 amended by EO 12013 of Oct. 7, 1977, 42 FR 54931, 3 CFR, 1977 Comp., p. 147; EO 12318 of Aug. 21, 1981, 46 FR 42833, 3 CFR, 1981 Comp., p. 173]

SEC. 2. In order to carry out the provisions of Section 1 of this order, the Director shall maintain a continuing study for the improvement of the statistical work of the agencies in the executive branch of the Federal Government with a view to obtaining the maximum benefit from the funds and facilities available for such work, giving due consideration to the constantly changing character of the various needs for statistical information both within and without the Government and, where the statistical work is primarily concerned with operating programs, giving due consideration to administrative needs, statutory requirements, and the needs involved in the development of administrative and legislative recommendations. The Director, either upon his own initiative or upon the request of any such agency, shall (a) provide for the interchange of information calculated to improve statistical work, (b) make appropriate arrangements for improving statistical work involving relationships between two or more agencies, and (c) assist the agencies, by other means, to improve their statistical work.

[Sec. 2 amended by EO 12013 of Oct. 7, 1977, 42 FR 54931, 3 CFR, 1977 Comp., p. 147; EO 12318 of Aug. 21, 1981, 46 FR 42833, 3 CFR, 1981 Comp., p. 173]

SEC. 3. The following shall be included among the objectives sought in carrying out the provisions of Section 1 hereof:

(a) To achieve an adequate program of statistical work in the agencies of the executive branch, in relation to over-all needs for statistical information, including the filling of gaps and overcoming of weaknesses in presently available statistical information.

(b) To achieve the most effective use of resources available for statistical work by the agencies, in relation to over-all needs.

(c) To minimize the burden upon those furnishing statistical data needed by the various Federal agencies.

(d) To improve the reliability and timeliness of statistical information.

(e) To achieve maximum comparability among the several statistical series and studies.

(f) To improve the presentation of statistical information and of explanations regarding the sources and reliability of such information, and regarding the limitations on the uses that can appropriately be made of it.

SEC. 4. Regulations and orders issued pursuant to Section 1 hereof shall be signed by the Director. When so signed, such regulations and orders shall require no further approval and shall be adhered to by all agencies in the executive branch. Any such regulation or order may pertain to a single agency, a group of agencies, or all agencies in the executive branch.

[Sec. 4 amended by EO 12013 of Oct. 7, 1977, 42 FR 54931, 3 CFR, 1977 Comp., p. 147; EO 12318 of Aug. 21, 1981, 46 FR 42833, 3 CFR, 1981 Comp., p. 173]

SEC. 5. In the development of programs and the preparation of regulations and orders for issuance pursuant to Section 1 hereof, the Director shall consult Federal agencies whose activities will be substantially affected, and may consult non-Federal groups to the extent he finds it necessary to carry out the purposes of this order.

[Sec. 5 amended by EO 12013 of Oct. 7, 1977, 42 FR 54931, 3 CFR, 1977 Comp., p. 147; EO 12318 of Aug. 21, 1981, 46 FR 42833, 3 CFR, 1981 Comp., p. 173]

SEC. 6. The authority outlined in this order is in addition to and not in substitution for the existing authority of the Director, or of the Office of Management and Budget, with respect to statistical and reporting activities. To the extent, however, that this order conflicts with any previous Executive order affecting statistical or reporting activities, the provisions of this order shall control.

[Sec. 6 amended by EO 12013 of Oct. 7, 1977, 42 FR 54931, 3 CFR, 1977 Comp., p. 147; EO 12318 of Aug. 21, 1981, 46 FR 42833, 3 CFR, 1981 Comp., p. 173]

SEC. 7. As required by Section 3(a) of the Paperwork Reduction Act of 1980 (94 Stat. 2825; 44 U.S.C. 3503 note), the Director shall redelegate to the Administrator for the Office of Information and Regulatory Affairs, Office of Management and Budget, all functions, authority, and responsibility under Section 103 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 18b) which have been vested in the Director by this Order.

[Former sec. 7 deleted and new sec. 7 added by EO 12318 of Aug. 21, 1981, 46 FR 42833, 3 CFR, 1981 Comp., p. 173]

SEC. 8. [Revoked]

[Sec. 8 revoked by EO 12318 of Aug. 21, 1981, 46 FR 42833, 3 CFR, 1981 Comp., p. 173]

4. E.O. 10,480

The Director of the Federal Emergency Management Agency must consult with OMB before setting up an advisory committee.

Executive Order 10480—Further providing for the administration of the defense mobilization program

SOURCE: The provisions of Executive Order 10480 of Aug. 14, 1953, appear at 18 FR 4939, 3 CFR, 1949–1953 Comp., p. 962, unless otherwise noted.

CROSS REFERENCE: Section 3 of Executive Order 11725 of June 27, 1973, 38 FR 17175, 3 CFR, 1970–1975 Comp., p. 779, which was revoked by EO 12148 of July 20, 1979, Chapter 44, p. 806, transferred certain functions under Executive Order 10480 to the Administrator of General Services.

By virtue of the authority vested in me by the Constitution and laws of the United States, including the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and as President of the United States and Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

* * *

PART V. VOLUNTARY AGREEMENTS

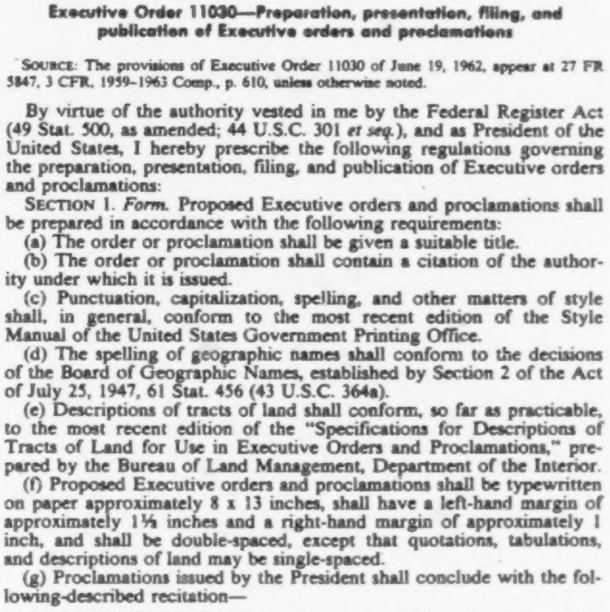
SEC. 501.

* * *

(b) The functions conferred upon the President by section 708(d) of the Defense Production Act and delegated under section 501(a) of this order, relating to the establishment of advisory committees, shall be exercised only after consultation with, and in accordance with guidelines and procedures established by, the Director of the Office of Management and Budget.

5. E.O. 11,030

All proposed executive orders must be transmitted to and reviewed by OMB.



Executive Order 11030—Preparation, presentation, filing, and publication of Executive orders and proclamations

SOURCE: The provisions of Executive Order 11030 of June 19, 1962, appear at 27 FR 5847, 3 CFR, 1959–1963 Comp., p. 610, unless otherwise noted.

By virtue of the authority vested in me by the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. 301 *et seq.*), and as President of the United States, I hereby prescribe the following regulations governing the preparation, presentation, filing, and publication of Executive orders and proclamations:

SECTION 1. *Form.* Proposed Executive orders and proclamations shall be prepared in accordance with the following requirements:

(a) The order or proclamation shall be given a suitable title.

(b) The order or proclamation shall contain a citation of the authority under which it is issued.

(c) Punctuation, capitalization, spelling, and other matters of style shall, in general, conform to the most recent edition of the Style Manual of the United States Government Printing Office.

(d) The spelling of geographic names shall conform to the decisions of the Board of Geographic Names, established by Section 2 of the Act of July 25, 1947, 61 Stat. 456 (43 U.S.C. 364a).

(e) Descriptions of tracts of land shall conform, so far as practicable, to the most recent edition of the "Specifications for Descriptions of Tracts of Land for Use in Executive Orders and Proclamations," prepared by the Bureau of Land Management, Department of the Interior.

(f) Proposed Executive orders and proclamations shall be typewritten on paper approximately 8 x 13 inches, shall have a left-hand margin of approximately 1½ inches and a right-hand margin of approximately 1 inch, and shall be double-spaced, except that quotations, tabulations, and descriptions of land may be single-spaced.

(g) Proclamations issued by the President shall conclude with the following-described recitation—

IN WITNESS WHEREOF, I have hereunto set my hand this .... day of ...., in the year of our Lord ...., and of the Independence of the United States of America the ....

[Sec. 1 amended by EO 11354 of May 23, 1967, 32 FR 7695, 3 CFR, 1966–1970 Comp., p. 652]

SEC. 2. *Routing and approval of drafts.* (a) A proposed Executive order or proclamation shall first be submitted, with seven copies thereof, to the Director of the Bureau of the Budget,[1] together with a letter, signed by the head or other properly authorized officer of the originating Federal agency, explaining the nature, purpose, background, and effect of the proposed Executive order or proclamation and its relationship, if any, to pertinent laws and other Executive orders or proclamations.

(b) If the Director of the Bureau of the Budget approves the proposed Executive order or proclamation, he shall transmit it to the Attorney General for his consideration as to both form and legality.

(c) If the Attorney General approves the proposed Executive order or proclamation, he shall transmit it to the Director of the Office of the Federal Register, National Archives and Records Service,[1] General Services Administration: *Provided*, that in cases involving sufficient urgency the Attorney General may transmit it directly to the President; and *provided further*, that the authority vested in the Attorney General by this section may be delegated by him, in whole or in part, to the Deputy Attorney General, Solicitor General, or to such Assistant Attorney General as he may designate.

(d) After determining that the proposed Executive order or proclamation conforms to the requirements of Section 1 of this order and is free from typographical or clerical error, the Director of the Office of the Federal Register shall transmit it and three copies thereof to the President.

(e) If the proposed Executive order or proclamation is disapproved by the Director of the Bureau of the Budget or by the Attorney General, it shall not thereafter be presented to the President unless it is accompanied by a statement of the reasons for such disapproval.

SEC. 3. *Routing and certification of originals and copies.*

(a) If the order or proclamation is signed by the President, the original and two copies shall be forwarded to the Director of the Office of the Federal Register for publication in the FEDERAL REGISTER.

(b) The Office of the Federal Register shall cause to be placed upon the copies of all Executive orders and proclamations forwarded as provided in subsection (a) of this section the following notation, to be signed by the Director or by some person authorized by him to sign such notation: Certified to be a true copy of the original.

[Sec. 3 amended by EO 11354 of May 23, 1967, 32 FR 7695, 3 CFR, 1966–1970 Comp., p. 652]

SEC. 4. *Proclamations calling for the observance of special days or events.* Except as may be otherwise provided by law, responsibility for the preparation and presentation of proposed proclamations calling for the observance of special days, or other periods of time, or events shall be assigned by the Director of the Bureau of the Budget to such agencies as he may consider appropriate. Such proposed proclamations shall be submitted to the Director at least sixty days before the date of the specified observance. Notwithstanding the provisions of Section 2, the Director shall transmit any approved commemorative proclamations to the President.

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[1] EDITORIAL NOTE: Redesignated as the Director of the Office of Management and Budget by Reorganization Plan No. 2 of 1970, 35 FR 7959, 3 CFR, 1966–1970 Comp., p. 1070, effective July 1, 1970.

6. E.O. 11,044

The Director of Arms Control and Disarmament Agency must submit to OMB a report and assessment of agency activities affecting arms control.

Executive Order 11044—Interagency coordination of arms control and disarmament matters

SOURCE: The provisions of Executive Order 11044 of Aug. 20, 1962, appear at 27 FR 8341, 3 CFR, 1959-1963 Comp., p. 627, unless otherwise noted.

* * *

SEC. 4. *Research.* With the advice and assistance of affected agencies, the Director shall develop and keep current a comprehensive and balanced program of research, development and other studies needed to be conducted by or for the Government for arms control and disarmament policy formulation. The Director shall maintain a continuing inventory of Federal activities related to the planned program and advise the affected agencies as to their respective participations in the planned program in order to produce harmonious action and prevent duplication of effort. The Director shall periodically submit to the Director of the Bureau of the Budget[1] a consolidated schedule of such activities with assessments of their respective programs by the responsible agencies, together with his evaluations regarding these activities.

7. E.O. 11,060

The Director of OMB prescribes hospital rates.

Executive Order 11060—Prescribing certain regulations and delegating to the Attorney General certain authority of the President to prescribe other regulations relating to the recovery from tortiously liable third persons of the cost of hospital and medical care and treatment furnished by the United States

SOURCE: The provisions of Executive Order 11060 of Nov. 7, 1962, appear at 27 FR 10925, 3 CFR, 1959–1963 Comp., p. 651, unless otherwise noted.

Under and by virtue of the authority vested in me by Title 3 of the United States Code and by Section 2(a) of the Act of September 25, 1962 (Public Law 87-693), it is hereby ordered as follows:

SECTION 1. The Director of the Bureau of the Budget[1] shall, for the purposes of the Act of September 25, 1962, from time to time, determine and establish rates that represent the reasonable value of hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished.

SEC. 2. Except as provided in Section 1 of this order, the Attorney General shall prescribe regulations to carry out the purposes of the Act of September 25, 1962.

8. E.O. 11,140

The Director of OMB approves sites of hospitals.

Executive Order 11140—Delegating certain functions of the President relating to the Public Health Service

SOURCE: The provisions of Executive Order 11140 of Jan. 30, 1964, appear at 29 FR 1637, 3 CFR, 1964–1965 Comp., p. 177, unless otherwise noted.

By virtue of the authority vested in me by Section 201 of Title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. The Secretary of Health, Education, and Welfare[1] is hereby authorized and empowered, without the approval, ratification, or other action of the President, to perform the following-described functions vested in the President under the Public Health Service Act (58 Stat. 682), as amended:

* * *

(g) The authority under Sections 321(a) and 364(a) (42 U.S.C. 248(a) and 267(a)) to approve the selection of suitable sites for and the establishment of additional institutions, hospitals, stations, grounds, and anchorages; subject, however, to the approval of the Director of the Bureau of the Budget,[1] except as he may otherwise provide.

9. E.O. 11,541

Presidential delegations of authority and functions, and reaffirmation of prior delegations, to OMB.

Executive Order 11541—Prescribing the duties of the Office of Management and Budget and the Domestic Council in the Executive Office of the President

SOURCE: The provisions of Executive Order 11541 of July 1, 1970, appear at 35 FR 10737, 3 CFR, 1966–1970 Comp., p. 939, unless otherwise noted.

CROSS REFERENCE: Executive Order 11541 was superseded by Executive Orders 11609 of July 22, 1971, this chapter, p. 619, and 11717 of May 9, 1973, this chapter, p. 625, to the extent that it is inconsistent with those orders.

By virtue of the authority vested in me by the Constitution and statutes of the United States, including section 301 of title 3 of the United States Code, and pursuant to Reorganization Plan No. 2 of 1970 (hereinafter referred to as "the Plan"), it is ordered as follows:

SECTION 1. (a) All functions transferred to the President of the United States by Part I of the Plan (including the function vested by section 102(f) of designating the officials of the Office of Management and Budget who shall act as Director during the absence or disability of the Deputy Director or in the event of a vacancy in the office of Deputy Director) are hereby delegated to the Director of the Office of Management and Budget in the Executive Office of the President. Such functions shall be carried out by the Director under the direction of the President and pursuant to such further instructions as the President from time to time may issue.

(b) All outstanding delegations, rules, regulations, orders, circulars, bulletins, or other forms of Executive or administrative action issued or taken by or relating to the Bureau of the Budget or the Director of the Bureau of the Budget prior to the effective date of this order shall, until amended or revoked, remain in full force and effect as if issued or taken by or relating to the Office of Management and Budget or the Director of the Office of Management and Budget.

(c) The delegation to the Director of the Office of Management and Budget, pursuant to subsection (a) of this Section, of the functions vested in the Director of the Bureau of the Budget by Section 103 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 18b) and subsequently transferred to the President by Part I of Reorganization Plan No. 2 of 1970 (5 U.S.C. App. II), shall be implemented in accord with Section 3(a) of the Paperwork Reduction Act of 1980 (94 Stat. 2825; 44 U.S.C. 3503 note), to the extent that provision is applicable.

(d) The delegation to the Director of the Office of Management and Budget of the following executive development and personnel functions (which have been transferred to the Office of Personnel Management) is terminated on December 4, 1977:

(1) Providing overall Executive Branch leadership, regulation, and guidance in executive personnel selection, development and management.

(2) Studying and reporting on issues relating to position classification and the compensation of Federal civilian employees, including linkages among pay systems, and providing reports on average grade levels, work-years and personnel costs of Federal civilian employees.

(3) Providing primary Executive Branch leadership in (i) developing and reviewing a program of policy guidance to departments and agencies for the organization of management responsibility under the Federal Labor Relations program; and (ii) monitoring issues and trends in labor management relations for referral to appropriate Executive Branch officials including the Federal Labor Relations Council.

[Sec. 1 amended by EO 12013 of Oct. 7, 1977, 42 FR 54931, 3 CFR, 1977 Comp., p. 147; EO 12027 of Dec. 5, 1977, 42 FR 61851, 3 CFR, 1977 Comp., p. 159; EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264; EO 12318 of Aug. 21, 1981, 46 FR 42833, 3 CFR, 1981 Comp., p. 173]

10. E.O. 11,592

OMB approval authority under the River and Harbor and Flood Control Acts of 1970.

Executive Order 11592—Delegating certain authority of the President to the Director of the Office of Management and Budget

SOURCE: The provisions of Executive Order 11592 of May 6, 1971, appear at 36 FR 8555, 3 CFR, 1971-1975 Comp., p. 559, unless otherwise noted.

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, the Director of the Office of Management and Budget is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the function of granting the approvals authorized or required to be granted by the President by any of the provisions of the River and Harbor Act of 1970 and the Flood Control Act of 1970, Public Law 91-611, approved December 31, 1970.

11. E.O. 11,600

Approval of OMB seal.

Executive Order 11600—Establishing a seal for the Office of Management and Budget

SOURCE: The provisions of Executive Order 11600 of June 29, 1971, appear at 36 FR 12471, 3 CFR, 1971-1975 Comp., p. 569, unless otherwise noted.

The Director of the Office of Management and Budget has caused to be made, and has recommended that I approve, a seal of Office for the Office of Management and Budget, the design of which accompanies and is hereby made a part of this order, and which is described as follows:

On a blue disc, the Arms of the United States proper above a curved gold scroll inscribed "OFFICE OF MANAGEMENT AND BUDGET", in black raised letters, all within a white border edged gold and inscribed "EXECUTIVE OFFICE OF THE PRESIDENT OF THE UNITED STATES", in blue raised letters. Dark blue suggested by the Seal of the President denotes the direct organizational link with the Presidential office. The arms of the United States refer to the entire Nation and represent the Office's involvement in the organizational and technological processes necessary to assist the President in his role as Chief Executive of the United States.

It appears that such a seal is of suitable design and appropriate for adoption as the official seal of the Office of Management and Budget.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, I hereby approve such seal as the official seal of the Office of Management and Budget.

EDITORIAL NOTE: An illustration of the seal, which was attached to and made a part of Executive Order 11600, is printed in 3 CFR, 1971-1975 Comp., p. 570.

12. E.O. 11,609

Presidential delegations of authority to OMB with respect to (1) provision, occupancy, availability and rate and charges for civilian employee quarters and facilities, (2) approval of transfers of balances of appropriations, (3) approval of condemnations, contracts for purchase of lands, and agreements between National Capital Planning Commission and States of Maryland and Virginia, (4) acquisition of certain land, approval of regulations relating to rental of substandard housing for members of armed forces, and approval of agency printing and binding.

Executive Order 11609—Delegating certain functions vested in the President to other officers of the Government

SOURCE: The provisions of Executive Order 11609 of July 22, 1971, appear at 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586, unless otherwise noted.

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

* * *

SEC. 9. *Office of Management and Budget*. The Director of the Office of Management and Budget is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) The authority of the President under 5 U.S.C. 5911(f) to issue the regulations provided for therein (relating to the provision, occupancy, and availability of quarters and facilities, the determination of rates and charges therefor, and other related matters, as are necessary and appropriate to carry out the provision of section 5911).

(2) The authority of the President under 10 U.S.C. 126(a) to approve the transfers of balances of appropriations provided for therein.

(3) The authority of the President under section 202 of the Budget and Accounting Procedures Act of September 12, 1950, 64 Stat. 833 (31 U.S.C. 581c) to approve the transfers of balances of appropriations provided for in subsections (a) and (b) of that section.

(4) The authority of the President under the last sentence of section 11 of the Act of June 6, 1924, c. 270, 43 Stat. 463 (40 U.S.C. 72), to approve (i) the designation of lands to be acquired by condemnation, (ii) contracts for purchase of lands, and (iii) agreements between the National Capital Planning Commission and officials of the States of Maryland and Virginia.

(5) The authority of the President under section 1 of the Act of December 22, 1928, c. 48, 45 Stat. 1070 (40 U.S.C. 72a), to approve contracts for acquisition of land subject to limited rights reserved to the grantor and for the acquisition of limited permanent rights in land adjoining park property.

(6) The authority of the President under section 407(b) of the Act of August 30, 1957, 71 Stat. 556 (42 U.S.C. 1594j(b)), to approve regulations (relating to the rental of substandard housing for members of the uniformed services) prescribed pursuant to that section. The Secretaries referred to in section 407(c) of that Act shall furnish the Director of the Office of Management and Budget such reports with respect to matters within the scope of the regulations so approved as he may require and at such times as he may specify.

(7) The authority of the President under 44 U.S.C. 1108 to approve the use, from the appropriations available for printing and binding, of such sums as are necessary for the printing of journals, magazines, periodicals, and similar publications.

(8) The authority of the President under the paragraph appearing under the heading "Expenses of Management Improvement" in title III of the Treasury, Post Office, and Executive Office Appropriation Act, 1971, P.L. 91–422, 84 Stat. 877, or by any reenactment of the provisions of that paragraph in the same or in a different amount of funds, to allocate to any agency or office of the executive branch (including the Office of Management and Budget) funds appropriated by that paragraph or by any such reenactment of it. The Director of the Office of Management and Budget shall from time to time report to the President concerning activities carried on by executive agencies and offices with funds allocated under this paragraph and shall, consonant with law, exercise such direction and control with respect to those activities as he shall deem appropriate.

13. E.O. 11,672

OMB must approve valuation and transfers of Postal Service property.

Executive Order 11672—Providing for the transfer or furnishing of property under the Postal Reorganization Act

SOURCE: The provisions of Executive Order 11672 of June 6, 1972, appear at 37 FR 11455, 3 CFR, 1971-1975 Comp., p. 715, unless otherwise noted.

By virtue of the authority vested in me by the Postal Reorganization Act (39 U.S.C. 2002(d)) and section 301 of title 3 of the United States Code, and as President of the United States it is hereby ordered as follows:

SECTION 1. The authority conferred upon the President by section 2002(d) of title 39 of the United States Code is hereby delegated to the Administrator of General Services subject to the provisions of this order.

SEC. 2. Property transferred to the Postal Service under this order shall be subject to reimbursement at fair market value, as agreed to by the Administrator of General Services and the Postmaster General, unless the Director of the Office of Management and Budget finds that a different basis of valuation, or transfer without reimbursement, is more equitable or better serves the public interest.

SEC. 3. Reimbursement of fair market value required for property transfers to the Postal Service under this order may consist of cash payments or, subject to approval by the Director of the Office of Management and Budget, property transferred from the Postal Service to other departments, agencies, or independent establishments of the Government of the United States, or both cash and approved properties.

SEC. 4. Heads of agencies furnishing property to the Postal Service under section 411 of title 39 of the United States Code shall require reimbursement at fair market value of such property or at a rate based on appropriate commercial charges for comparable property, as agreed to by the agency head and the Postmaster General, unless the Director of the Office of Management and Budget finds that a different basis of valuation is more equitable or better serves the public interest.

SEC. 5. Delegations of authority made in this order may be redelegated.

14. E.O. 11,717

OMB reaffirmed in its general oversight and fiscal control roles in area automatic data processing matters.

Executive Order 11717—Transferring certain functions from the Office of Management and Budget to the General Services Administration and the Department of Commerce

SOURCE: The provisions of Executive Order 11717 of May 9, 1973, appear at 38 FR 12315, 3 CFR, 1971-1975 Comp., p. 766, unless otherwise noted.

CROSS REFERENCE: Executive Order 11893 of Dec. 31, 1975, this chapter, p. 628, supersedes Executive Order 11717 to the extent it is inconsistent with that order.

By virtue of the authority vested in me as President by the Constitution and Statutes of the United States, particularly by section 301 of title 3 of the United States Code, the Federal Property and Administrative Services Act of 1949, as amended, the Budget and Accounting Act, 1921, as amended, the Budget and Accounting Procedures Act of 1950, as amended, and Reorganization Plan No. 2 of 1970, it is hereby ordered as follows:

SECTION 1. There are hereby transferred to the Administrator of General Services all functions that were being performed in the Office of Management and Budget on April 13, 1973 by:

(1) the Financial Management Branch, the Procurement and Property Management Branch, and the Management Systems Branch of the Organization and Management Systems Division; and

(2) the Management Information and Computer Systems Division with respect to policy control over automatic data processing (except those functions relating to the establishment of Government-wide automatic data-processing standards).

SEC. 2. There are hereby transferred to the Secretary of Commerce all functions being performed on the date of this order in the Office of Management and Budget relating to the establishment of Government-wide automatic data processing standards, including the function of approving standards on behalf of the President pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended.

SEC. 3. (a) The functions transferred to the Administrator of the General Services Administration and to the Secretary of Commerce by this order do not include those performed in connection with the general oversight responsibilities of the Director of the Office of Management and Budget, as the head of that agency and as Assistant to the President for executive management, and the functions transferred by this order shall be performed subject to such general oversight to the same extent that other functions of the General Services Administration and the Department of Commerce, respectively, are so performed.

(b) The functions vested in the President by the first sentence of section 111(g) of the Federal Property and Administrative Services Act of 1949, as amended, with respect to fiscal control of automatic data processing activities shall continue to be performed by the Director of the Office of Management and Budget. No function vested by statute in the Director shall be deemed to be affected by the provisions of this order.

SEC. 4. So much of the personnel, property, records and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available, in connection with the functions transferred by this order as the Director of the Office of Management and Budget shall determine, shall be transferred to the Department of Commerce and the General Services Administration, respectively, at such times as the Director shall specify.

SEC. 5. Executive Order No. 11541 of July 1, 1970, is hereby superseded to the extent that it is inconsistent with this order.

SEC. 6. This order shall be effective as of April 15, 1973.

15. E.O. 11,721

OMB is designated as part of panel known as President's Pay Agent to make annual recommendation with respect to Federal pay.

Executive Order 11721—Providing for Federal pay administration

SOURCE: The provisions of Executive Order 11721 of May 23, 1973, appear at 38 FR 13717, 3 CFR, 1971-1975 Comp., p. 770, unless otherwise noted.

By virtue of the authority vested in me by sections 5303, 5304, and 5305 of title 5, United States Code, and as President of the United States, it is hereby ordered as follows:

* * *

PART II—ANNUAL PAY REVIEW

SEC. 201. The Secretary of Labor, the Director of the Office of Management and Budget, and the Director of the Office of Personnel Management are hereby designated to serve jointly as the President's agent under section 5305 of title 5, United States Code, and shall be known in this capacity as the President's Pay Agent.

[Sec. 201 amended by EO 12004 of July 20, 1977, 42 FR 37527, 3 CFR, 1977 Comp., p. 138; EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

SEC. 202. The head of each agency employing personnel under the statutory pay systems (as defined in section 5301(c) of title 5, United States Code) shall provide such information and technical assistance with respect to the statutory pay systems applicable to his agency as may be requested by the President's agent in carrying out the provisions of section 5305 of title 5, United States Code.

SEC. 203. The following agencies are designated under section 5305(q) of title 5, United States Code, to prescribe the rules necessary to convert the rates of basic pay or salaries of officers and employees to the new pay rates as adjusted for each statutory pay system under section 5305 of title 5, United States Code:

(i) General Schedule—the Office of Personnel Management;

(ii) Foreign Service schedules—the Department of State;

(iii) Schedules for the Department of Medicine and Surgery of the Veterans Administration—the Veterans Administration.

[Sec. 203 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

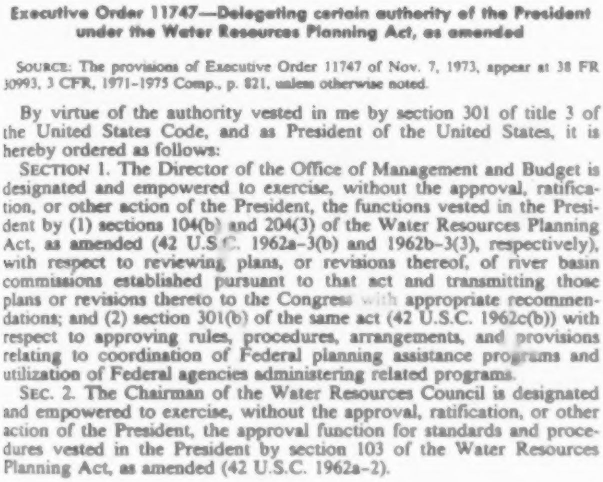
SEC. 204. (a) The Advisory Committee on Federal Pay shall advise the President of its own opinion on any unresolved issues referred to it by the President's Pay Agent or the Federal Employees Pay Council. The Advisory Committee shall inform the President's Pay Agent and the Federal Employees Pay Council of its opinion on such issues as soon as practicable. To facilitate the exercise of this authority and the early resolution of such issues, the Advisory Committee shall attend, or be represented at, meetings between the President's Pay Agent and the Federal Employees Pay Council, and moderate and direct the discussion.

(b) The President's Pay Agent, in its annual report to the President pursuant to section 5305 of title 5, United States Code, shall include a full discussion of each issue upon which the Advisory Committee has submitted, in accordance with subsection (a), an opinion.

[Sec. 204 added by EO 12004 of July 20, 1977, 42 FR 37527, 3 CFR, 1977 Comp., p. 138]

16. E.O. 11,747

OMB reviews and approves plans of river basin commissions and coordinates Federal planning assistance.



Executive Order 11747—Delegating certain authority of the President under the Water Resources Planning Act, as amended

SOURCE: The provisions of Executive Order 11747 of Nov. 7, 1973, appear at 38 FR 30993, 3 CFR, 1971-1975 Comp., p. 821, unless otherwise noted.

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. The Director of the Office of Management and Budget is designated and empowered to exercise, without the approval, ratification, or other action of the President, the functions vested in the President by (1) sections 104(b) and 204(3) of the Water Resources Planning Act, as amended (42 U.S.C. 1962a-3(b) and 1962b-3(3), respectively), with respect to reviewing plans, or revisions thereof, of river basin commissions established pursuant to that act and transmitting those plans or revisions thereto to the Congress with appropriate recommendations; and (2) section 301(b) of the same act (42 U.S.C. 1962c(b)) with respect to approving rules, procedures, arrangements, and provisions relating to coordination of Federal planning assistance programs and utilization of Federal agencies administering related programs.

SEC. 2. The Chairman of the Water Resources Council is designated and empowered to exercise, without the approval, ratification, or other action of the President, the approval function for standards and procedures vested in the President by section 103 of the Water Resources Planning Act, as amended (42 U.S.C. 1962a-2).

17. E.O. 11,762

The OMB Director must give prior approval to proposed Veterans' Administration rules under the Veterans' Health Care Expansion Act of 1973.

Executive Order 11762—Delegating to the Administrator of Veterans' Affairs certain authority relating to grants-in-aid to the Republic of the Philippines for medical care and treatment of veterans

SOURCE: The provisions of Executive Order 11762 of Jan. 17, 1974, appear at 39 FR 2347, 3 CFR, 1971-1975 Comp., p. 846, unless otherwise noted.

By virtue of the authority vested in me by section 633 of title 38 and by section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. (a) Subject to the provisions of subsections (b) and (c) of this section, the Administrator of Veterans' Affairs is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority vested in the President by sections 631, 632, 633, and 634 of title 38 of the United States Code, as amended by section 107(a) of the Veterans Health Care Expansion Act of 1973 (Public Law 93-82; 87 Stat. 184).

(b) The Secretary of State shall negotiate the agreement, and any modifications thereby with the Republic of the Philippines required by the provisions of sections 631, 632, 633, and 634 of title 38 of the United States Code.

(c) All rules and regulations prescribed by the Administrator pursuant to the authority delegated to him by this order shall be subject to prior approval by the Director of the Office of Management and Budget.

SEC. 2. Nothing in this order shall be construed as modifying or terminating any other authority heretofore delegated by the President to the Administrator of Veterans' Affairs.

18. E.O. 11,845

OMB performs the reporting functions of the President under the Budget and Impoundment Control Act.

Executive Order 11845—Delegating certain reporting functions to the Director of the Office of Management and Budget

SOURCE: The provisions of Executive Order 11845 of Mar. 24, 1975, appear at 40 FR 13299, 3 CFR, 1971-1975 Comp., p. 970, unless otherwise noted.

By virtue of the authority vested in me by the Impoundment Control Act of 1974 (Public Law 93-344; 88 Stat. 332, hereinafter referred to as the Act), and section 301 of title 3 of the United States Code, the Director of the Office of Management and Budget is hereby designated and empowered to exercise, as of October 1, 1974 without ratification or other action of the President (1) the functions required by sections 1014(b) and 1014(d) of the Act of transmitting to the Comptroller General of the United States and to the Office of the Federal Register copies of special messages transmitted pursuant to section 1012 or 1013 of the Act; and (2) the function conferred upon the President by section 1014(e) of the Act of submitting to the Congress cumulative reports of proposed rescissions, reservations, and deferrals of budget authority.

19. E.O. 11,846

The OMB Director is a member of East-West Foreign Trade Board.

Executive Order 11846—Administration of the trade agreements program

Source: The provisions of Executive Order 11846 of Mar. 27, 1975, appear at 40 FR 14291, 3 CFR, 1971-1975 Comp., p. 971, unless otherwise noted.

By virtue of the authority vested in me by the Trade Act of 1974, hereinafter referred to as the Act (Public Law 93-618, 88 Stat. 1978), the Trade Expansion Act of 1962, as amended (19 U.S.C. 1801), Section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351), and Section 301 of Title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

* * *

Sec. 7. *East-West Foreign Trade Board.* (a) In accordance with Section 411 of the Act, there is hereby established the East-West Foreign Trade Board, hereinafter referred to as the Board.[1] The Board shall be composed of the following members and such additional members of the Executive branch as the President may designate:

(1) The Secretary of State.
(2) The Secretary of the Treasury.
(3) The Secretary of Defense.
(4) The Secretary of Agriculture.
(5) The Secretary of Commerce.
(6) The United States Trade Representative.
(7) The Director of the Office of Management and Budget.
(8) The Chairman of the Council of Economic Advisers.
(9) The President of the Export-Import Bank of the United States.

The President shall designate the Chairman and the Deputy Chairman of the Board. The President may designate an Executive Secretary, who shall be Chairman of a working group which will include membership from the agencies represented on the Board.

(b) The Board shall perform such functions as are required by Section 411 of the Act and such other functions as the President may direct.

(c) The Board is authorized to promulgate such rules and regulations as are necessary or appropriate to carry out its responsibilities under the Act and this Order.

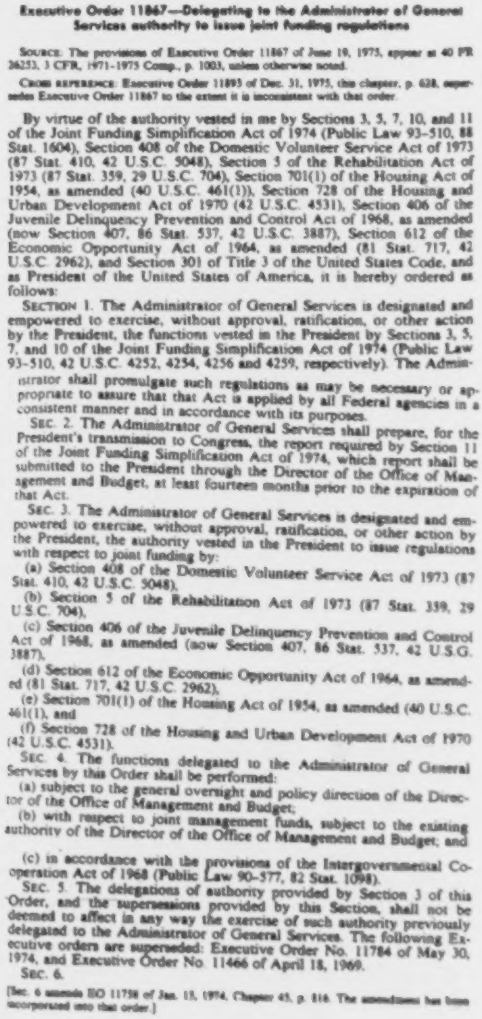
(d) The Secretary of State shall advise the President with respect to determinations required to be made in connection with Sections 402 and 409 of the Act (dealing with freedom of emigration) and Section 403 (dealing with United States personnel missing in action in Southeast Asia), and shall prepare, for the President's transmission to Congress, the reports and other documents required by Sections 402 and 409 of the Act.

(e) The President's Committee on East-West Trade Policy, established by Executive Order No. 11789 of June 25, 1974, as amended by Section 6(d) of Executive Order No. 11808 of September 30, 1974, is abolished and all of its records are transferred to the Board.

[Sec. 7 amended by EO 11894 of Jan. 3, 1976, 41 FR 1041, 3 CFR, 1976 Comp., p. 81; EO 12102 of Nov. 17, 1978, 43 FR 54197, 3 CFR, 1978 Comp., p. 258; affected by EO 12188 of Jan. 2, 1980, 45 FR 989, 3 CFR, 1980 Comp., p. 131]

20. E.O. 11,867

Functions under Joint Funding Simplification Act to Administrator of GSA are subject to OMB oversight, and with respect to joint management funds subject to OMB approval authority.



Executive Order 11867—Delegating to the Administrator of General Services authority to issue joint funding regulations

SOURCE: The provisions of Executive Order 11867 of June 19, 1975, appear at 40 FR 26253, 3 CFR, 1971-1975 Comp., p. 1003, unless otherwise noted.

CROSS REFERENCE: Executive Order 11893 of Dec. 31, 1975, this chapter, p. 628, supersedes Executive Order 11867 to the extent it is inconsistent with that order.

By virtue of the authority vested in me by Sections 3, 5, 7, 10, and 11 of the Joint Funding Simplification Act of 1974 (Public Law 93-510, 88 Stat. 1604), Section 408 of the Domestic Volunteer Service Act of 1973 (87 Stat. 410, 42 U.S.C. 5048), Section 5 of the Rehabilitation Act of 1973 (87 Stat. 359, 29 U.S.C. 704), Section 701(1) of the Housing Act of 1954, as amended (40 U.S.C. 461(1)), Section 728 of the Housing and Urban Development Act of 1970 (42 U.S.C. 4531), Section 406 of the Juvenile Delinquency Prevention and Control Act of 1968, as amended (now Section 407, 86 Stat. 537, 42 U.S.C. 3887), Section 612 of the Economic Opportunity Act of 1964, as amended (81 Stat. 717, 42 U.S.C. 2962), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. The Administrator of General Services is designated and empowered to exercise, without approval, ratification, or other action by the President, the functions vested in the President by Sections 3, 5, 7, and 10 of the Joint Funding Simplification Act of 1974 (Public Law 93-510, 42 U.S.C. 4252, 4254, 4256 and 4259, respectively). The Administrator shall promulgate such regulations as may be necessary or appropriate to assure that that Act is applied by all Federal agencies in a consistent manner and in accordance with its purposes.

SEC. 2. The Administrator of General Services shall prepare, for the President's transmission to Congress, the report required by Section 11 of the Joint Funding Simplification Act of 1974, which report shall be submitted to the President through the Director of the Office of Management and Budget, at least fourteen months prior to the expiration of that Act.

SEC. 3. The Administrator of General Services is designated and empowered to exercise, without approval, ratification, or other action by the President, the authority vested in the President to issue regulations with respect to joint funding by:

(a) Section 408 of the Domestic Volunteer Service Act of 1973 (87 Stat. 410, 42 U.S.C. 5048),

(b) Section 5 of the Rehabilitation Act of 1973 (87 Stat. 359, 29 U.S.C. 704),

(c) Section 406 of the Juvenile Delinquency Prevention and Control Act of 1968, as amended (now Section 407, 86 Stat. 537, 42 U.S.G. 3887),

(d) Section 612 of the Economic Opportunity Act of 1964, as amended (81 Stat. 717, 42 U.S.C. 2962),

(e) Section 701(1) of the Housing Act of 1954, as amended (40 U.S.C. 461(1), and

(f) Section 728 of the Housing and Urban Development Act of 1970 (42 U.S.C. 4531).

SEC. 4. The functions delegated to the Administrator of General Services by this Order shall be performed:

(a) subject to the general oversight and policy direction of the Director of the Office of Management and Budget;

(b) with respect to joint management funds, subject to the existing authority of the Director of the Office of Management and Budget; and

(c) in accordance with the provisions of the Intergovernmental Cooperation Act of 1968 (Public Law 90-577, 82 Stat. 1098).

SEC. 5. The delegations of authority provided by Section 3 of this Order, and the supersessions provided by this Section, shall not be deemed to affect in any way the exercise of such authority previously delegated to the Administrator of General Services. The following Executive orders are superseded: Executive Order No. 11784 of May 30, 1974, and Executive Order No. 11466 of April 18, 1969.

SEC. 6.

[Sec. 6 amends EO 11758 of Jan. 15, 1974, Chapter 45, p. 816. The amendment has been incorporated into that order.]

21. E.O. 11,874

OMB to provide support services for Legal Services Corporation.

Executive Order 11874—Delegation of functions to the Director of the Office of Management and Budget

SOURCE: The provisions of Executive Order 11874 of July 25, 1975, appear at 40 FR 31737, 3 CFR, 1971-1975 Comp., p. 1013, unless otherwise noted.

By virtue of the authority vested in me by Section 1012 of the Economic Opportunity Act of 1964, as amended by the Legal Services Corporation Act of 1974 (88 Stat. 388, 42 U.S.C. 2996k), and Section 301 of Title 3 of the United States Code, and as President of the United States, the Director of the Office of Management and Budget is hereby designated and empowered to exercise the authority vested in the President by said Section 1012 of the Economic Opportunity Act of 1964, as amended, to direct that appropriate support functions of the Federal Government may be made available to the Legal Services Corporation in carrying out its activities, to the extent not inconsistent with other applicable law. Such functions shall be provided under terms and conditions as may be agreed upon by the Legal Services Corporation and the Federal agencies involved.

22. E.O. 11,893

President re-delegates to OMB all functions transferred to GSA respecting automatic data processing procurement. See, E.O. 11,717, supra no. 14.

Executive Order 11893—Transferring certain functions from the General Services Administration to the Office of Management and Budget

SOURCE: The provisions of Executive Order 11893 of Dec. 31, 1975, appear at 41 FR 1040, 3 CFR, 1971–1975 Comp., p. 1069, unless otherwise noted.

By virtue of the authority vested in me as President by the Constitution and Statutes of the United States, particularly by section 301 of title 3 of the United States Code, the Federal Property and Administrative Services Act of 1949, as amended, the Budget and Accounting Act, 1921, as amended, the Budget and Accounting Procedures Act of 1950, as amended, Reorganization Plan No. 2 of 1970; and section 5317 of title 5 of the United States Code, it is hereby ordered as follows:

SECTION 1. There are hereby transferred to the Director of the Office of Management and Budget all policy functions that were transferred to the Administrator of General Services by Section 1 (1) of Executive Order No. 11717, dated May 9, 1973, and Executive Order No. 11867, dated June 19, 1975.

SEC. 2. The Director of the Office of Management and Budget shall continue to perform policy formulation and general oversight functions with regard to the other transfers made by Executive Order No. 11717 and Executive Order No. 11867. No function vested by statute in the Administrator shall be deemed to be affected by the provisions of this order.

SEC. 3. So much of the personnel, property and records attendant to the functions transferred by this order as the Director of the Office of Management and Budget shall determine, shall be transferred to the Office of Management and Budget, at such times as the Director shall specify.

SEC. 4. Executive Order No. 11717 of May 9, 1973, and Executive Order No. 11867 of June 19, 1975, are hereby superseded to the extent that they are inconsistent with this order. Any circulars, directives, or regulations issued pursuant to functions transferred by this order shall remain in effect until modified or rescinded by the Office of Management and Budget.

SEC. 5.

[Sec. 5 amended EO 11861 of May 21, 1975, 40 FR 22531, 3 CFR, 1970–1975 Comp., p. 995, which was revoked by EO 12076 of Aug. 18, 1978.]

SEC. 6. This order shall be effective as of December 31, 1975.

23. E.O. 11,912

Office of Federal Procurement Policy provides policy guidance under energy conservation laws and OMB Director must concur in conservation plans with respect to Federal buildings.

Executive Order 11912—Delegation of authorities relating to energy policy and conservation

SOURCE: The provisions of Executive Order 11912 of Apr. 13, 1976, appear at 41 FR 15825, 3 CFR, 1976 Comp., p. 114, unless otherwise noted.

By virtue of the authority vested in me by the Constitution and the statutes of the United States of America, including the Energy Policy and Conservation Act (Public Law 94–163, 89 Stat. 871, 42 U.S.C. 6201 *et seq.*), the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 *et seq.*), the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

* * *

SEC. 3. The Administrator of the Office of Federal Procurement Policy, in the exercise of his statutory responsibility to provide overall direction of procurement policy (41 U.S.C. 405), shall, after consultation with the heads of appropriate agencies, including those responsible for developing energy conservation and efficiency standards, and to the extent he considers appropriate and with due regard to the program activities of the Executive agencies, provide policy guidance governing the application of energy conservation and efficiency standards in the Federal procurement process in accord with section 381(a)(1) of the Energy Policy and Conservation Act (89 Stat. 939, 42 U.S.C. 6361(a)(1)).

* * *

SEC. 10. (a) (1) The Secretary of Energy, hereinafter referred to as the Secretary, shall develop, with the concurrence of the Director of the Office of Management and Budget, and in consultation with the Secretary of Defense, the Secretary of Housing and Urban Development, the Administrator of Veterans' Affairs, the Administrator of General Services, and the heads of such other Executive agencies as he deems appropriate, the ten-year plan for energy conservation with respect to Government buildings, as provided by section 381(a)(2) of the Energy Policy and Conservation Act (42 U.S.C. 6361(a)(2)).

(2) The goals established in subsection (b) shall apply to the following categories of Federally-owned buildings: (i) office buildings, (ii) hospitals, (iii) schools, (iv) prison facilities, (v) multi-family dwellings, (vi) storage facilities, and (vii) such other categories of buildings for which the Secretary determines the establishment of energy-efficiency performance goals is feasible.

(b) The Secretary shall establish requirements and procedures, which shall be observed by each agency unless a waiver is granted by the Secretary, designed to ensure that each agency to the maximum extent practicable aims to achieve the following goals:

(1) For the total of all Federally-owned existing buildings the goal shall be a reduction of 20 percent in the average annual energy use per gross square foot of floor area in 1985 from the average energy use per gross square foot of floor area in 1975. This goal shall apply to all buildings for which construction was or design specifications were completed prior to the date of promulgation of the guidelines pursuant to subsection (d) of this Section.

(2) For the total of all Federally-owned new buildings the goal shall be a reduction of 45 percent in the average annual energy requirement per gross square foot of floor area in 1985 from the average annual energy use per gross square foot of floor area in 1975. This goal shall apply to all new buildings for which design specifications are completed after the date of promulgation of the guidelines pursuant to subsection (d) of this Section.

(c) The Secretary with the concurrence of the Director of the Office of Management and Budget, in consultation with the heads of the Executive agencies specified in subsection (a) and the Director of the National Bureau of Standards, shall establish, for purposes of developing the ten-year plan, a practical and effective method for estimating and comparing life cycle capital and operating costs for Federal buildings, including residential, commercial, and industrial type categories. Such method shall be consistent with the Office of Management and Budget Circular No. A-94, and shall be adopted and used by all agencies in developing their plans pursuant to subsection (e), annual reports pursuant to subsection (g), and budget estimates pursuant to subsection (h). For purposes of this paragraph, the term "life cycle cost" means the total costs of owning, operating, and maintaining a building over its economic life, including its fuel and energy costs, determined on the basis of a systematic evaluation and comparison of alternative building systems.

(d) Not later than November 1, 1977, the Secretary, with the concurrence of the Director of the Office of Management and Budget, and after consultation with the Administrator of General Services and the heads of the Executive agencies specified in subsection (a) shall issue guidelines for the plans to be submitted pursuant to subsection (e).

(e) (1) The head of each Executive agency that maintains any existing building or will maintain any new building shall submit no later than six months after the issuance of guidelines pursuant to subsection (d), to the Secretary a ten-year plan designed to the maximum extent practicable to meet the goals in subsection (b) for the total of existing or new Federal buildings. Such ten-year plans shall only consider improvements that are cost-effective consistent with the criteria established by the Director of the Office of Management and Budget (OMB Circular A-94) and the method established pursuant to subsection (c) of this Section. The plan submitted shall specify appropriate energy-saving initiatives and shall estimate the expected improvements by fiscal year in terms of specific accomplishments—energy savings and cost savings—together with the estimated costs of achieving the savings.

(2) The plans submitted shall, to the maximum extent practicable, include the results of preliminary energy audits of all existing buildings with over 30,000 gross square feet of space owned and maintained by Executive agencies. Further, the second annual report submitted under subsection (g)(2) of this Section shall, to the maximum extent practicable, include the results of preliminary energy audits of all existing buildings with more than 5,000 but not more than 30,000 gross square feet of space. The purpose of such preliminary energy audits shall be to identify the type, size, energy use level and major energy using systems of existing Federal buildings.

(3) The Secretary shall evaluate agency plans relative to the guidelines established pursuant to subsection (d) for such plans and relative to the cost estimating method established pursuant to subsection (c). Plans determined to be deficient by the Administrator will be returned to the submitting agency head for revision and resubmission within 60 days.

(4) The head of any Executive agency submitting a plan, should he disagree with the Secretary's determination with respect to that plan, may appeal to the Director of the Office of Management and Budget for resolution of the disagreement.

(f) The head of each agency submitting a plan or revised plan determined not deficient by the Secretary or, on appeal, by the Director of the Office of Management and Budget, shall implement the plan in accord with approved budget estimates.

(g) (1) Each Executive agency shall submit to the Secretary an overall plan for conserving fuel and energy in all operations of the agency. This overall plan shall be in addition to and include any ten-year plan for energy conservation in Government buildings submitted in accord with Subsection (e).

(2) By July 1 of each year, each Executive agency shall submit a report to the Secretary on progress made toward achieving the goals established in the overall plan required by paragraph (1) of this subsection. The annual report shall include quantitative measures and accomplishment with respect to energy saving actions taken, the cost of these actions, the energy saved, the costs saved, and other benefits realized.

(3) The Secretary shall prepare a consolidated annual report on Federal government progress toward achieving the goals, including aggregate quantitative measures of accomplishment as well as suggested revisions to the ten-year plan, and submit the report to the President by August 15 of each year.

(h) Each agency required to submit a plan shall submit to the Director of the Office of Management and Budget with the agency's annual budget submission, and in accordance with procedures and requirements that the Director shall establish, estimates for implementation of the agency's plan. The Director of the Office of Management and Budget shall consult with the Secretary about the agency budget estimates.

(i) Each agency shall program its proposed energy conservation improvements of buildings so as to give the highest priority to the most cost-effective projects.

(j) No agency of the Federal Government may enter into a lease or a commitment to lease a building the construction of which has not commenced by the effective date of this Order unless the building will likely meet or exceed the general goal set forth in subsection (b)(2).

(k) The provisions of this Section do not apply to housing units repossessed by the Federal Government.

[Sec. 10 added by EO 12003 of July 20, 1977, 42 FR 37523, 3 CFR, 1977 Comp., p. 134; amended by EO 12038 of Feb. 3, 1978, 43 FR 4957, 3 CFR, 1978 Comp., p. 136, as amended by EO 12156 of Sept. 10, 1979, 44 FR 53073, 3 CFR, 1979 Comp., p. 427]

24. E.O. 11,958

The Secretary of Defense must consult with the OMB Director with respect to his functions under Section 36(a)(5) and (6) of the Arms Export Control Act.

Executive Order 11958—Administration of arms export controls

SOURCE: The provisions of Executive Order 11958 of Jan. 18, 1977, appear at 42 FR 4311, 3 CFR, 1977 Comp., p. 79, unless otherwise noted.

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Arms Export Control Act, as amended (22 U.S.C. 2751 *et seq.*), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

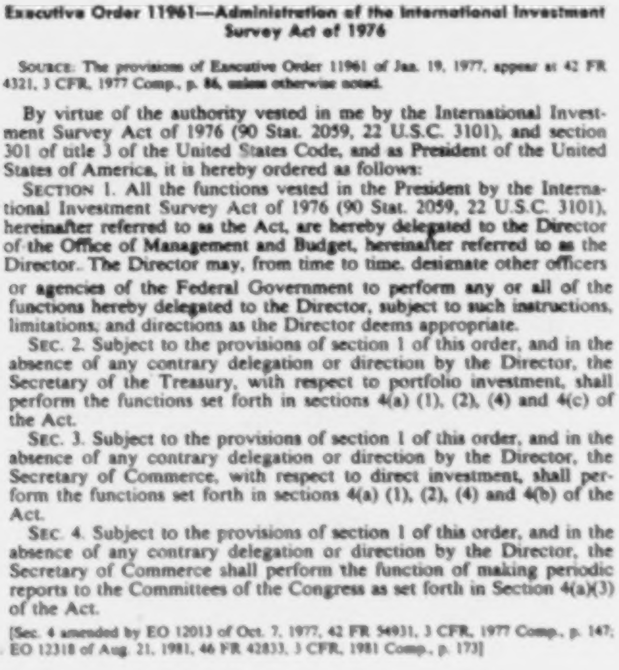
SECTION 1. *Delegation of Functions.* The following functions conferred upon the President by the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), hereinafter referred to as the Act, are delegated as follows:

* * *

(j) Those under Sections 36 (a) and 36(b)(1) of the Act, except with respect to the certification of an emergency as provided by subsection (b)(1), to the Secretary of Defense. The Secretary of Defense, in the implementation of the functions delegated to him under Sections 36(a) and (b)(1) shall consult with the Secretary of State, who shall, with respect to matters related to subparagraphs (D) and (I) of Section 36(b)(1), consult with the Director of the Arms Control and Disarmament Agency. With respect to those functions under Sections 36(a) (5) and (6), the Secretary of Defense shall consult with the Director of the Office of Management and Budget.

25. E.O. 11,961

OMB is made responsible for collection and analysis of data with respect to surveys as to U.S. direct investments abroad and foreign direct investments in the U.S. See, 22 U.S.C. 3101 et seq.



Executive Order 11961—Administration of the International Investment Survey Act of 1976

SOURCE: The provisions of Executive Order 11961 of Jan. 19, 1977, appear at 42 FR 4321, 3 CFR, 1977 Comp., p. 86, unless otherwise noted.

By virtue of the authority vested in me by the International Investment Survey Act of 1976 (90 Stat. 2059, 22 U.S.C. 3101), and section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. All the functions vested in the President by the International Investment Survey Act of 1976 (90 Stat. 2059, 22 U.S.C. 3101), hereinafter referred to as the Act, are hereby delegated to the Director of the Office of Management and Budget, hereinafter referred to as the Director. The Director may, from time to time, designate other officers or agencies of the Federal Government to perform any or all of the functions hereby delegated to the Director, subject to such instructions, limitations, and directions as the Director deems appropriate.

SEC. 2. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Secretary of the Treasury, with respect to portfolio investment, shall perform the functions set forth in sections 4(a) (1), (2), (4) and 4(c) of the Act.

SEC. 3. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Secretary of Commerce, with respect to direct investment, shall perform the functions set forth in sections 4(a) (1), (2), (4) and 4(b) of the Act.

SEC. 4. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Secretary of Commerce shall perform the function of making periodic reports to the Committees of the Congress as set forth in Section 4(a)(3) of the Act.

[Sec. 4 amended by EO 12013 of Oct. 7, 1977, 42 FR 54931, 3 CFR, 1977 Comp., p. 147; EO 12318 of Aug. 21, 1981, 46 FR 42833, 3 CFR, 1981 Comp., p. 173]

26. E.O. 12,039

Responsibility for fostering policies to facilitate the transfer and use of research and development results in science, engineering and technology to assist in ameliorating problems at state, regional and local levels.

Executive Order 12039—Relating to the transfer of certain science and technology policy functions

SOURCE: The provisions of Executive Order 12039 of Feb. 24, 1978, appear at 43 FR 8095, 3 CFR, 1978 Comp., p. 139, unless otherwise noted.

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including Section 7 of Reorganization Plan No. 1 of 1977 (42 FR 56101 (October 21, 1977)), Section 301 of Title 3 of the United States Code, and Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), and as President of the United States of America, in order to provide for the transfer of certain science and technology functions, it is hereby ordered as follows:

* * *

SEC. 2. (a) The intergovernmental science, engineering, and technology functions under Section 205(b)(1) of the Act (42 U.S.C. 6614(b)(1)), which were transferred to the President (see Section 1(b) of this Order), are delegated to the Director of the Office of Science and Technology Policy; *Except that*, the responsibility for fostering any policies to facilitate the transfer and utilization of research and development results is delegated to the Director of the Office of Management and Budget.

(b) The functions vested by subsection (a) of this Section in the Director of the Office of Management and Budget shall be performed in accord with the Director's responsibilities under the Integovernmental Cooperation Act of 1968 (82 Stat. 1098, 42 U.S.C. 4201 *et seq.*). The Director of the Office of Science and Technology Policy shall advise the Director of the Office of Management and Budget with respect to the needs of State, regional, and local governments which may be assisted by the utilization of science, engineering, and technology research and development results.

(c) The functions vested by subsection (a) of this Section in the Director of the Office of Science and Technology Policy shall be performed in coordination with the Director of the Office of Management and Budget and with others as designated by the President.

(d) [Revoked]

[Sec. 2(d) revoked by EO 12399 of Dec. 31, 1982, 48 FR 379, 3 CFR, 1982 Comp., p. 236]

SEC. 3. The Federal science, engineering, and technology functions under Section 303 (a) and (b)(1) of the Act (42 U.S.C. 6633 (a) and (b)(1)), which were transferred to the President (see Section 1(b) of this Order), are delegated to the Director of the Office of Science and Technology Policy: *Except that*, those functions concerned with reorganization, including Federal-State liaison, are delegated to the Director of the Office of Management and Budget, who shall be provided advice and assistance thereon by the Director of the Office of Science and Technology Policy.

* * *

SEC. 6. The records, property, personnel, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, reassigned, or redelegated by this Order are hereby transferred to the Director of the Office of Management and Budget, the Director of the Office of Science and Technology Policy, or the Director of the National Science Foundation, as appropriate.

SEC. 7. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

SEC. 8. This Order shall be effective on February 26, 1978.

27. E.O. 12,046

Responsibility for advising the President on procurement and management of Federal telecommunications systems and for developing and establishing policies for procurement and management of such systems, and for making final dispositions of appeals from frequency assignments by the Secretary of Commerce for radio stations owned and operated by the United States, is vested in OMB.

Executive Order 12046—Relating to the transfer of telecommunications functions

SOURCE: The provisions of Executive Order 12046 of Mar. 27, 1978, appear at 43 FR 13349, 3 CFR, 1978 Comp., p. 158, unless otherwise noted.

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including Section 7 of Reorganization Plan No. 1 of 1977 (42 FR 56101 (October 21, 1977)), the authority and control vested in the President by Section 2 of Executive Order No. 11556, as amended, Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, in order to provide for the transfer of certain telecommunications functions, it is hereby ordered as follows:

* * *

SECTION 3

FUNCTIONS ASSIGNED TO THE OFFICE OF MANAGEMENT AND BUDGET

3-1. *Telecommunications Procurement and Management.*

3-101. The responsibility for serving as the President's principal adviser on procurement and management of Federal telecommunications systems and the responsibility for developing and establishing policies for procurement and management of such systems, which responsibilities were assigned to the Director of the Office of Telecommunications Policy subject to the authority and control of the President by Section 2(b) of Executive Order No. 11556, were transferred to the President.

3-102. These functions are delegated to the Director of the Office of Management and Budget.

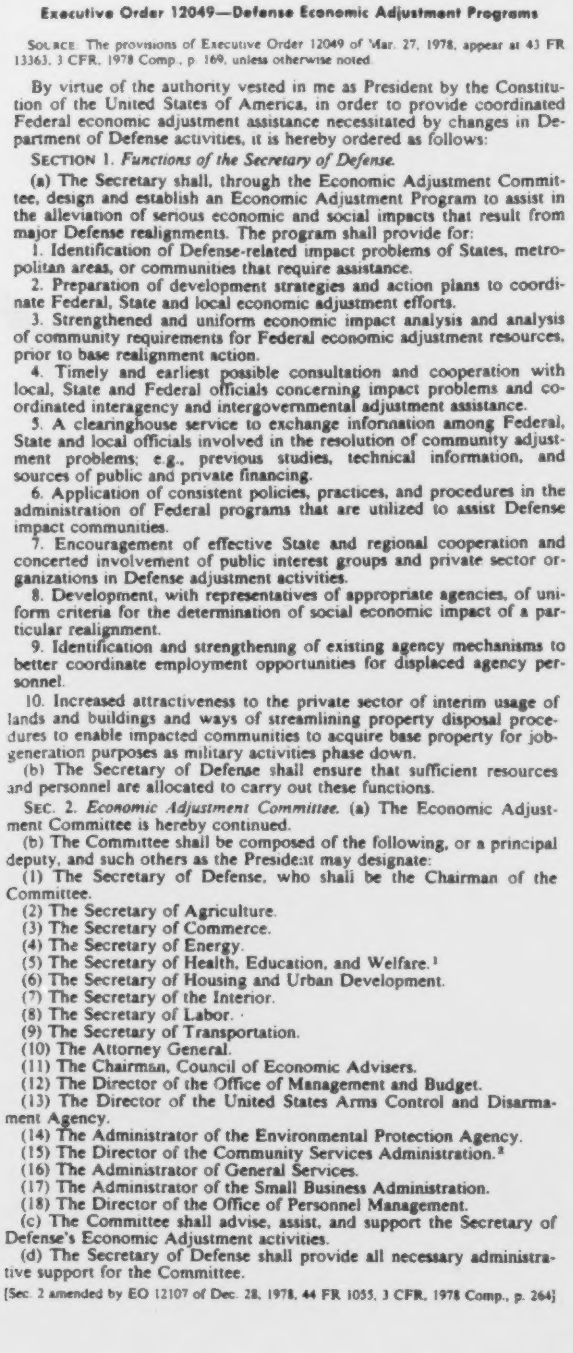
3-2. *Radio Frequency Appeals.*

3-201. The authority to make final disposition of appeals from frequency assignments by the Secretary of Commerce for radio stations belonging to and operated by the United States, which authority was vested in the President by Section 305(a) of the Communications Act of 1934 (47 U.S.C. 305(a)) and transferred to the Director of the Office of Telecommunications Policy by Reorganization Plan No. 1 of 1970 (5 U.S.C. App. II), was transferred to the President.

3-202. This function is delegated to the Director of the Office of Management and Budget.

28. E.O. 12,049

The OMB Director is a member of the Economic Adjustment Committee.



Executive Order 12049—Defense Economic Adjustment Programs

SOURCE: The provisions of Executive Order 12049 of Mar. 27, 1978, appear at 43 FR 13363, 3 CFR, 1978 Comp., p. 169, unless otherwise noted.

By virtue of the authority vested in me as President by the Constitution of the United States of America, in order to provide coordinated Federal economic adjustment assistance necessitated by changes in Department of Defense activities, it is hereby ordered as follows:

SECTION 1. *Functions of the Secretary of Defense.*

(a) The Secretary shall, through the Economic Adjustment Committee, design and establish an Economic Adjustment Program to assist in the alleviation of serious economic and social impacts that result from major Defense realignments. The program shall provide for:

1. Identification of Defense-related impact problems of States, metropolitan areas, or communities that require assistance.
2. Preparation of development strategies and action plans to coordinate Federal, State and local economic adjustment efforts.
3. Strengthened and uniform economic impact analysis and analysis of community requirements for Federal economic adjustment resources, prior to base realignment action.
4. Timely and earliest possible consultation and cooperation with local, State and Federal officials concerning impact problems and coordinated interagency and intergovernmental adjustment assistance.
5. A clearinghouse service to exchange information among Federal, State and local officials involved in the resolution of community adjustment problems; e.g., previous studies, technical information, and sources of public and private financing.
6. Application of consistent policies, practices, and procedures in the administration of Federal programs that are utilized to assist Defense impact communities.
7. Encouragement of effective State and regional cooperation and concerted involvement of public interest groups and private sector organizations in Defense adjustment activities.
8. Development, with representatives of appropriate agencies, of uniform criteria for the determination of social economic impact of a particular realignment.
9. Identification and strengthening of existing agency mechanisms to better coordinate employment opportunities for displaced agency personnel.
10. Increased attractiveness to the private sector of interim usage of lands and buildings and ways of streamlining property disposal procedures to enable impacted communities to acquire base property for job-generation purposes as military activities phase down.

(b) The Secretary of Defense shall ensure that sufficient resources and personnel are allocated to carry out these functions.

SEC. 2. *Economic Adjustment Committee.* (a) The Economic Adjustment Committee is hereby continued.

(b) The Committee shall be composed of the following, or a principal deputy, and such others as the President may designate:

(1) The Secretary of Defense, who shall be the Chairman of the Committee.
(2) The Secretary of Agriculture.
(3) The Secretary of Commerce.
(4) The Secretary of Energy.
(5) The Secretary of Health, Education, and Welfare.[1]
(6) The Secretary of Housing and Urban Development.
(7) The Secretary of the Interior.
(8) The Secretary of Labor.
(9) The Secretary of Transportation.
(10) The Attorney General.
(11) The Chairman, Council of Economic Advisers.
(12) The Director of the Office of Management and Budget.
(13) The Director of the United States Arms Control and Disarmament Agency.
(14) The Administrator of the Environmental Protection Agency.
(15) The Director of the Community Services Administration.[2]
(16) The Administrator of General Services.
(17) The Administrator of the Small Business Administration.
(18) The Director of the Office of Personnel Management.

(c) The Committee shall advise, assist, and support the Secretary of Defense's Economic Adjustment activities.

(d) The Secretary of Defense shall provide all necessary administrative support for the Committee.

[Sec. 2 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

29. E.O. 12,072

Administrator of GSA must coordinate proposed programs and plans for Federal facilities in urban areas with OMB.

Executive Order 12072—Federal space management

SOURCE: The provisions of Executive Order 12072 of Aug. 16, 1978, appear at 43 FR 36869, 3 CFR, 1978 Comp., p. 213, unless otherwise noted.

By the authority vested in me as President of the United States of America by Section 205(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(a)), and in order to prescribe appropriate policies and directives, not inconsistent with that Act and other applicable provisions of law, for the planning, acquisition, utilization, and management of Federal space facilities, it is hereby ordered as follows:

1-1. *Space Acquisition.*

1-101. Federal facilities and Federal use of space in urban areas shall serve to strengthen the Nation's cities and to make them attractive places to live and work. Such Federal space shall conserve existing urban resources and encourage the development and redevelopment of cities.

1-102. Procedures for meeting space needs in urban areas shall give serious consideration to the impact a site selection will have on improving the social, economic, environmental, and cultural conditions of the communities in the urban area.

1-103. Except where such selection is otherwise prohibited, the process for meeting Federal space needs in urban areas shall give first consideration to a centralized community business area and adjacent areas of similar character, including other specific areas which may be recommended by local officials.

1-104. The process of meeting Federal space needs in urban areas shall be consistent with the policies of this Order and shall include consideration of the following criteria:

(a) Compatibility of the site with State, regional, or local development, redevelopment, or conservation objectives.

(b) Conformity with the activities and programs of other Federal agencies.

(c) Impact on economic development and employment opportunities in the urban area, including the utilization of human, natural, cultural, and community resources.

(d) Availability of adequate low and moderate income housing for Federal employees and their families on a nondiscriminatory basis.

(e) Availability of adequate public transportation and parking and accessibility to the public.

1-105. Procedures for meeting space needs in urban areas shall be consistent with the policies of this Order and shall include consideration of the following alternatives:

(a) Availability of existing Federally controlled facilities.

(b) Utilization of buildings of historic, architectural, or cultural significance within the meaning of section 105 of the Public Buildings Cooperative Use Act of 1976 (90 Stat. 2507, 40 U.S.C. 612a).

(c) Acquisition or utilization of existing privately owned facilities.

(d) Construction of new facilities.

(e) Opportunities for locating cultural, educational, recreational, or commercial activities within the proposed facility.

1-106. Site selection and space assignments shall take into account the management needs for consolidation of agencies or activities in common or adjacent space in order to improve administration and management and effect economies.

* * *

1-203. In the process of meeting Federal space needs in urban areas and implementing the policies of this Order, the Administrator shall:

* * *

(b) Coordinate proposed programs and plans for facilities and space with the Director of the Office of Management and Budget.

30. E.O. 12,073

The Administrator of the Office of Federal Procurement Policy is given overall responsibility for direction and oversight of the policies affecting government procurement programs for labor surplus area.

Executive Order 12073—Federal procurement in labor surplus areas

SOURCE: The provisions of Executive Order 12073 of Aug. 16, 1978, appear at 43 FR 36873, 3 CFR, 1978 Comp., p. 216, unless otherwise noted.

By the authority vested in me as President by the Constitution of the United States of America, and in order to strengthen the economic base of our Nation, it is hereby ordered as follows:

1-1. *Procurements in Labor Surplus Areas.*

1-101. Executive agencies shall emphasize procurement set-asides in labor surplus areas in order to strengthen our Nation's economy.

1-102. Labor surplus area procurements shall be consistent with this Order and, to the extent funds are available, the priorities of Section 15 of the Small Business Act, as amended by Public Law 95-89 (15 U.S.C. 644).

1-2. *Administrator of General Services.*

1-201. The Administrator shall coordinate with and advise State and local officials with regard to Federal efforts to encourage procurements in labor surplus areas with the aim of fostering economic development in labor surplus areas.

1-202. The Administrator shall establish specific labor surplus area procurement targets for Executive agencies in consultation with the heads of those agencies.

1-203. In cooperation with the heads of Executive agencies, the Administrator shall encourage the use of set-asides or other appropriate methods for meeting procurement targets in labor surplus areas.

1-204. The Administrator shall report every six months to the President on the progress of the agencies in achieving the procurement targets.

1-3. *Agency Responsibility.*

1-301. The Secretary of Labor shall classify and designate labor markets which are labor surplus areas. The Secretary shall provide labor market data to the heads of agencies and State and local officials in order to promote the development of business opportunities in labor surplus areas.

1-302. The heads of Executive agencies shall cooperate with the Administrator in carrying out his responsibilities for labor surplus area programs and shall provide the information necessary for setting procurement targets and recording achievement. They shall keep the Administrator informed of plans and programs which affect labor surplus procurements, with particular attention to opportunities for minority firms.

1-303. In accord with Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405), the Administrator for Federal Procurement Policy shall be responsible for the overall direction and oversight of the policies affecting procurement programs for labor surplus areas.

31. E.O. 12,088

OMB screens individual agency plans to control environmental pollution, may allow agencies to use pollution abatement funds for other purposes, resolves conflicts over violations between agencies, or between an agency and other parties, and grants exemptions from applicable pollution control standards.

Executive Order 12088—Federal compliance with pollution control standards

Source: The provisions of Executive Order 12088 of Oct. 13, 1978, appear at 43 FR 47707, 3 CFR, 1978 Comp., p. 243, unless otherwise noted.

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 22 of the Toxic Substances Control Act (15 U.S.C. 2621), Section 313 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1323), Section 1447 of the Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300j–6), Section 118 of the Clean Air Act, as amended (42 U.S.C. 7418(b)), Section 4 of the Noise Control Act of 1972 (42 U.S.C. 4903), Section 6001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6961), and Section 301 of Title 3 of the United States Code, and to ensure Federal compliance with applicable pollution control standards, it is hereby ordered as follows:

1-1. *Applicability of Pollution Control Standards.*

1-101. The head of each Executive agency is responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under the control of the agency.

1-102. The head of each Executive agency is responsible for compliance with applicable pollution control standards, including those established pursuant to, but not limited to, the following:

(a) Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).

(b) Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*).

(c) Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*).

(d) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

(e) Noise Control Act of 1972 (42 U.S.C. 4901 *et seq.*).

(f) Solid Waste Disposal Act, as amended (42 U.S.C. 6901 *et seq.*).

(g) Radiation guidance pursuant to Section 274(h) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(h); see also, the Radiation Protection Guidance to Federal Agencies for Diagnostic X Rays approved by the President on January 26, 1978 and published at page 4377 of the Federal Register on February 1, 1978).

(h) Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401, 1402, 1411-1421, 1441-1444 and 16 U.S.C. 1431-1434).

(i) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*).

1-103. "Applicable pollution control standards" means the same substantive, procedural, and other requirements that would apply to a private person.

1-2. *Agency Coordination.*

1-201. Each Executive agency shall cooperate with the Administrator of the Environmental Protection Agency, hereinafter referred to as the Administrator, and State, interstate, and local agencies in the prevention, control, and abatement of environmental pollution.

1-202. Each Executive agency shall consult with the Administrator and with State, interstate, and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

1-3. *Technical Advice and Oversight.*

1-301. The Administrator shall provide technical advice and assistance to Executive agencies in order to ensure their cost effective and timely compliance with applicable pollution control standards.

1-302. The Administrator shall conduct such reviews and inspections as may be necessary to monitor compliance with applicable pollution control standards by Federal facilities and activities.

1-4. *Pollution Control Plan.*

1-401. Each Executive agency shall submit to the Director of the Office of Management and Budget, through the Administrator, an annual plan for the control of environmental pollution. The plan shall provide for any necessary improvement in the design, construction, management, operation, and maintenance of Federal facilities and activities, and shall include annual cost estimates. The Administrator shall establish guidelines for developing such plans.

1-402. In preparing its plan, each Executive agency shall ensure that the plan provides for compliance with all applicable pollution control standards.

1-403. The plan shall be submitted in accordance with any other instructions that the Director of the Office of Management and Budget may issue.

1-5. *Funding.*

1-501. The head of each Executive agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the agency budget.

1-502. The head of each Executive agency shall ensure that funds appropriated and apportioned for the prevention, control and abatement of environmental pollution are not used for any other purpose unless permitted by law and specifically approved by the Office of Management and Budget.

1-6. *Compliance With Pollution Controls.*

1-601. Whenever the Administrator or the appropriate State, interstate, or local agency notifies an Executive agency that it is in violation of an applicable pollution control standard (see Section 1-102 of this Order), the Executive agency shall promptly consult with the notifying agency and provide for its approval a plan to achieve and maintain compliance with the applicable pollution control standard. This plan shall include an implementation schedule for coming into compliance as soon as practicable.

1-602. The Administrator shall make every effort to resolve conflicts regarding such violation between Executive agencies and, on request of any party, such conflicts between an Executive agency and a State, interstate, or a local agency. If the Administrator cannot resolve a conflict, the Administrator shall request the Director of the Office of Management and Budget to resolve the conflict.

1-603. The Director of the Office of Management and Budget shall consider unresolved conflicts at the request of the Administrator. The Director shall seek the Administrator's technological judgment and determination with regard to the applicability of statutes and regulations.

1-604. These conflict resolution procedures are in addition to, not in lieu of, other procedures, including sanctions, for the enforcement of applicable pollution control standards.

1-605. Except as expressly provided by a Presidential exemption under this Order, nothing in this Order, nor any action or inaction under this Order, shall be construed to revise or modify any applicable pollution control standard.

1-7. *Limitation on Exemptions.*

1-701. Exemptions from applicable pollution control standards may only be granted under statutes cited in Section 1-102(a) through 1-102(f) if the President makes the required appropriate statutory determination: that such exemption is necessary (a) in the interest of national security, or (b) in the paramount interest of the United States.

1-702. The head of an Executive agency may, from time to time, recommend to the President through the Director of the Office of Management and Budget, that an activity or facility, or uses thereof, be exempt from an applicable pollution control standard.

1-703. The Administrator shall advise the President, through the Director of the Office of Management and Budget, whether he agrees or disagrees with a recommendation for exemption and his reasons therefor.

1-704. The Director of the Office of Management and Budget must advise the President within sixty days of receipt of the Administrator's views.

1-8. *General Provisions.*

1-801. The head of each Executive agency that is responsible for the construction or operation of Federal facilities outside the United States shall ensure that such construction or operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction.

1-802. Executive Order No. 11752 of December 17, 1973, is revoked.

32. E.O. 12,109

OPM Director must consult with OMB on rules on recruitment allowances for physicians.

Executive Order 12109—Federal physicians comparability allowance

SOURCE: The provisions of Executive Order 12109 of Dec. 28, 1978, appear at 44 FR 1067, 3 CFR, 1978 Comp., p. 275, unless otherwise noted.

By the authority vested in me as President of the United States of America by Section 5948 of Title 5 and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

1-101. The Director of the Office of Personnel Management is hereby designated and empowered to exercise, in consultation with the Director of the Office of Management and Budget, the authority of the President under Section 5948 of Title 5 of the United States Code, to prescribe regulations, criteria, and conditions with regard to the payment of comparability allowances to recruit and retain certain Federal physicians.

1-102. Until the Office of Personnel Management is established (on or before January 1, 1979), pursuant to Reorganization Plan No. 2 of 1978 (43 FR 36037), the Civil Service Commission shall exercise the authority delegated under this Order to the Director of the Office of Personnel Management.

33. E.O. 12,140

OMB establishes Critical Energy Facility Program which identifies needed non-nuclear facilities and facilitates expedited Federal agency decisionmaking with respect to licenses and other needed approvals.

Executive Order 12129—Critical Energy Facility Program

SOURCE: The provisions of Executive Order 12129 of Apr. 5, 1979, appear at 44 FR 21001, 3 CFR, 1979 Comp., p. 378, unless otherwise noted.

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to provide for timely coordinated Federal decisions on critical energy facility permit applications, it is hereby ordered as follows:

1-101. The Director of the Office of Management and Budget shall establish a Critical Energy Facility Program.

1-102. The Director of Office of Management and Budget, after consulting with the Executive agencies listed in Section 1-103, shall make recommendations to the President as to which non-nuclear facilities should be included in the Program. The President shall identify non-nuclear energy facilities which he deems to be of critical national importance and which need Federal permits for siting, construction, or operation. Those facilities shall be included in the Program. The Director of the Office of Management and Budget shall establish a system through which deadlines will be established for final administrative decision-making by Executive agencies, consistent with statutory requirements.

1-103. The following Executive agencies shall participate in the Program and the Director of the Office of Management and Budget may invite others to participate where appropriate:

(a) Department of the Interior.
(b) Department of Agriculture.
(c) Department of Commerce.
(d) Department of Transportation.
(e) Department of Energy.
(f) Environmental Protection Agency.
(g) Council on Environmental Quality.
(h) Department of the Army.

1-104. Each Executive agency in the Program shall submit such data and information as the Director of the Office of Management and Budget may require with respect to a critical energy facility, including:

(a) Date a completed application is expected to be received from the sponsors of a critical energy facility project.

(b) Targeted final decision date for each significant permit or statutory review.

(c) Compilation of the actions required of other Executive agencies before a participating Executive agency may make a final decision.

(d) Compilation of the actions required of non-Federal authorities before a participating Executive agency may make a final decision.

(e) Compilation of significant actions required of the applicant before a final decision may be made.

(f) Progress reports, including reasons for any changes in any targeted final decision dates.

1-105. On the basis of information received pursuant to Section 1-104, the Director of the Office of Management and Budget will provide to the President, to the participating Executive agencies, to the Governor of any affected State, and to the applicant a schedule of deadlines for Federal actions concerning each critical energy facility.

1-106. The Director of the Office of Management and Budget shall provide for appropriate interagency mechanisms for the conduct of multiple agency reviews; but, only where such reviews are consistent with the statutory obligations of the agencies, and only when such reviews will assist in the expeditious processing of facility permits.

1-107. The Director of the Office of Management and Budget shall assist participating Executive agencies with the establishment of joint Federal and State and local agency reviews. Such assistance shall be limited to those circumstances which are consistent with the legal obligations of the reviewing Federal and State and local agencies, and which will result in the expeditious processing of facility permits.

1-108. The Director of the Office of Management and Budget shall keep the President informed on agency performance in meeting scheduled decision deadlines.

1-109. The Director of the Office of Management and Budget shall, where appropriate, coordinate the procedures established herein with those procedures adopted by the Council on Environmental Quality pursuant to Executive Order No. 11991 (40 CFR Parts 1500-1508).

1-110. Nothing in this Order is intended to modify in any way (a) the review and decision-making responsibilities imposed by Federal or State statutes, or (b) the opportunity for timely State and local government and public participation in agency decision-making.

34. E.O. 12,146

The OMB Director is an advisory member of the Federal Legal Council.

Executive Order 12146—Management of Federal legal resources

SOURCE: The provisions of Executive Order 12146 of July 18, 1979, appear at 44 FR 42657, 3 CFR, 1979 Comp., p. 409, unless otherwise noted.

By the authority vested in me as President by the Constitution and statutes of the United States of America, it is hereby ordered as follows:

1-1. *Establishment of the Federal Legal Council.*

1-101. There is hereby established the Federal Legal Council, which shall be composed of the Attorney General and the representatives of not more than 15 other agencies. The agency representative shall be designated by the head of the agency.

1-102. The initial membership of the Council, in addition to the Attorney General, shall consist of representatives designated by the heads of the following agencies:

(a) The Department of Commerce.
(b) The Department of Defense.
(c) The Department of Energy.
(d) The Environmental Protection Agency.
(e) The Equal Employment Opportunity Commission.
(f) The Federal Trade Commission.
(g) The Department of Health, Education, and Welfare.[1]
(h) The Interstate Commerce Commission.
(i) The Department of Labor.
(j) The National Labor Relations Board.
(k) The Securities and Exchange Commission.
(*l*) The Department of State.
(m) The Department of the Treasury.
(n) The United States Postal Service and
(o) the Veterans Administration.

1-103. The initial members of the Council shall serve for a term of two years. Thereafter, the agencies which compose the membership shall be designated annually by the Council and at least five positions on the Council, other than that held by the Attorney General, shall rotate annually.

1-104. In addition to the above members, the Directors of the Office of Management and Budget and the Office of Personnel Management, or their designees, shall be advisory members of the Council.

1-105. The Attorney General shall chair the Council and provide staff for its operation. Representatives of agencies that are not members of the Council may serve on or chair subcommittees of the Council.

1-2. *Functions of the Council.*

1-201. The Council shall promote:

(a) coordination and communication among Federal legal offices;

(b) improved management of Federal lawyers, associated support personnel, and information systems:

(c) improvements in the training provided to Federal lawyers;

(d) the facilitation of the personal donation of *pro bono* legal services by Federal attorneys;

(e) the use of joint or shared legal facilities in field offices; and

(f) the delegation of legal work to field offices.

1-202. The Council shall study and seek to resolve problems in the efficient and effective management of Federal legal resources that are beyond the capacity or authority of individual agencies to resolve.

1-203. The Council shall develop recommendations for legislation and other actions: (a) to increase the efficient and effective operation and management of Federal legal resources, including those matters specified in Section 1-201, and (b) to avoid inconsistent or unnecessary litigation by agencies.

35. E.O. 12,152

OMB is vested with presidential authority to require systematic agency review of its activities, functions, or organization units; the reduction of payment to employees by agencies commensurate with employees' receipt of contributions or awards incident to training; and the absorption of costs of training by an agency from available appropriated funds.

Executive Order 12152—Director of the Office of Management and Budget

SOURCE: The provisions of Executive Order 12152 of Aug. 14, 1979, appear at 44 FR 48143, 3 CFR, 1979 Comp., p. 423, unless otherwise noted.

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 301 of Title 3 of the United States Code, and in order to ensure the continued delegation of certain functions which had been previously assigned but which are now vested directly in the President by virtue of H.R. 4616 that I have signed into law today, it is hereby ordered that the functions vested in the President by Sections 305(b), 4111(b), and 4112(a) of Title 5 of the United States Code are hereby delegated to the Director of the Office of Management and Budget.

36. E.O. 12,163

The Director of the U.S. International Development Cooperation Agency and the Secretary of State must consult the OMB Director with respect to excess grant assistance and functions under 22 U.S.C. 2413; all officers delegated functions under the order must consult with OMB; and the Associate Director of OMB is a member of the Development Coordination Committee.

Executive Order 12163—Administration of foreign assistance and related functions

SOURCE: The provisions of Executive Order 12163 of Sept. 29, 1979, appear at 44 FR 56673, 3 CFR, 1979 Comp., p. 435, unless otherwise noted.

By virtue of the authority vested in me by the Foreign Assistance Act of 1961, Reorganization Plan No. 2 of 1979, the International Development Cooperation Act of 1979, and section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

1-1. UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

1-101. *Establishment of the United States International Development Cooperation Agency.* Sections 1, 5, 6, and 8 of Reorganization Plan No. 2 of 1979 are declared effective and the United States International Development Cooperation Agency (hereinafter referred to as "IDCA") is hereby established.

1-102. *Delegation of Functions.*

* * *

(e) In carrying out the functions under section 653 of the Act that are delegated to the Director, the Director shall consult with the Director of the Office of Management and Budget.

* * *

1-2. DEPARTMENT OF STATE

1-201. *Delegation of Functions.*

* * *

(c) The functions under section 653 of the Act delegated to the Secretary shall be exercised in consultation with the Secretary of Defense, insofar as they relate to functions under the Act administered by the Department of Defense, and the Director of the Office of Management and Budget.

* * *

1-5. OTHER AGENCIES

* * *

1-506. *Development Coordination Committee.* (a) In accordance with section 640B of the Act, there is hereby established a Development Coordination Committee (hereinafter referred to as the Committee). The Committee shall consist of the Director of IDCA, who shall be Chair; the Administrator of the Agency for International Development, the Director of the Institute for Scientific and Technological Cooperation; the Under Secretary of State for Economic Affairs; the Under Secretary of the Treasury for Monetary Affairs; the Under Secretary of Commerce; the Under Secretary of Agriculture; the Under Secretary of Labor; the Under Secretary of Energy; a Deputy Special Representative for Trade Negotiations; and Associate Director of the Office of Management and Budget; a representative of the Assistant to the President for National Security Affairs; the President of the Export-Import Bank of the United States; the Director of the Peace Corps; and the President of the Overseas Private Investment Corporation.

1-6. ADDITIONAL DELEGATIONS AND LIMITATIONS OF AUTHORITY; CONSULTATION

* * *

1-605. *Interagency Consultation.* Each officer to whom functions are delegated by this order, shall, in carrying out such functions, consult with the heads of other departments and agencies, including the Director of the Office of Management and Budget, on matters pertaining to the responsibilities of departments and agencies other than his or her own.

37. E.O. 12,177

OMB performs the functions vested in the President with respect to Federal government employee pension plans under 31 U.S.C. 9503.

Executive Order 12177—Federal Government pension plans

SOURCE: The provisions of Executive Order 12177 of Dec. 10, 1979, appear at 44 FR 71805, 3 CFR, 1979 Comp., p. 464, unless otherwise noted.

By the authority vested in me as President of the United States of America by Section 121(a)(1) of the Budget and Accounting Procedures Act of 1950, as amended (92 Stat. 2541, Public Law 95-595, 31 U.S.C. 68a), and Section 301 of Title 3 of the United States Code, and in order to provide consistency among the financial and actuarial statements of Federal Government pension plans, it is hereby ordered as follows:

1-101. All the functions vested in the President by Section 121(a) of the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 68a), are delegated to the Director of the Office of Management and Budget. The Director may, from time to time, designate other officers or agencies of the Federal Government to perform any or all of the functions hereby delegated to the Director, subject to such instructions, limitations, and directions as the Director deems appropriate.

1-102. The head of an Executive agency responsible for the administration of any Federal Government pension plan within the meaning of Section 123(a) of the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 68c), except subsection (a)(9) and (b), shall ensure that the administrators of those plans comply with the form, manner, and time of filing as required by the Director of the Office of Management and Budget.

1-103. Subject to the provisions of Section 1-101 of this Order, and in the absence of any contrary delegation or direction by the Director, the Secretary of the Treasury, with respect to the development of the form and content of the annual reports, shall perform the functions set forth in Section 121(a) of the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 68a). In performing this function, the Secretary shall also be responsible for consulting with the Comptroller General.

38. E.O. 12,185

After consultation with OMB, agencies must publish proposed rules designed to achieve conservation of petroleum and natural gas in connection with receipt of financial assistance from such agencies. OMB may issue rules to implement the Order and may exercise the President's authority under section 403(b) of Pub. L. 95-620, including ordering sanctions to implement the Order and issuing waivers exempting a specific grant, loan, contract or other form of financial assistance.

Executive Order 12185—Conservation of petroleum and natural gas

SOURCE: The provisions of Executive Order 12185 of Dec. 17, 1979, appear at 44 FR 75093, 3 CFR, 1979 Comp., p. 474, unless otherwise noted.

By the authority vested in me as President of the United States of America by Section 403(b) of the Powerplant and Industrial Fuel Use Act of 1978 (92 Stat. 3318; Public Law 95–620) and Section 301 of Title 3 of the United States Code, in order to encourage additional conservation of petroleum and natural gas by recipients of Federal financial assistance, it is hereby ordered as follows:

1–101. Each Federal agency, as that term is defined in Section 103(a)(25) of the Powerplant and Industrial Fuel Act of 1978 (92 Stat. 3297), shall effectuate through its financial assistance programs the purposes of that Act relating to the conservation of petroleum and natural gas.

1–102. Each Federal agency which extends financial assistance shall review those programs of financial assistance and identify those which are most likely to offer opportunities for significant conservation of petroleum and natural gas.

1–103. Within two months, and annually thereafter, each agency shall publish for comment a list of those programs which it has identified as likely to offer significant opportunity for conservation. The public shall be given 60 days to submit comments, including suggestions for rules which would effectuate the conservation purposes of the Act.

1–104. After receiving public comment and suggestions, and after consulting with the Director of the Office of Management and Budget, each agency shall publish proposed rules designed to achieve conservation of petroleum and natural gas in connection with the receipt of financial assistance.

Proposed rules should be published within 30 days of the close of the comment period under Section 1–103.

1–105. Final rules shall be adopted by each agency in accordance with the provisions of Sections 102(b), 403(b) and 701(a) of the Powerplant and Industrial Fuel Use Act of 1978, and the provisions of this Order, not later than 180 days from the date of this Order.

1-106. No one shall be awarded any financial assistance unless that award complies with the provisions of the conservation rules adopted by the agency pursuant to this Order.

1-107. To the extent permitted by law and where not inconsistent with the financial assistance program, final rules may provide for the reduction or suspension of financial assistance under any award. Such reduction or suspension shall not be ordered until there has been an opportunity for hearing on the record, and shall last for such time as the recipient fails to comply with the terms of the conservation rule.

1-108. No conservation rule shall be adopted which is inconsistent with the statutory provisions establishing the financial assistance program.

1-109. No conservation rule shall be used to enforce compliance with any prohibition under the Act against any person or facility which has been specifically determined by the Secretary of Energy as subject to or exempt from a prohibition under the Act. The conservation rules shall be used to enforce other new ways of achieving the purposes of the Act related to the conservation of petroleum and natural gas.

1-110. In order to assess the effectiveness of this program, each agency shall annually prepare a report on its activities in accord with Section 403(b)(1)(B) of the Act. These reports shall be submitted to the President through the Secretary of Energy.

1-111. The Secretary of Energy shall prepare for the President's consideration and transmittal to the Congress the report required by Section 403(c) of the Act.

1-112. The Director of the Office of Management and Budget may issue any rules, regulations, or orders he deems necessary to ensure the implementation of this Order. The Director may exercise any of the authority vested in the President by Section 403(b) of the Act, and may redelegate such of that authority as he deems appropriate to the head of any other agency.

39. E.O. 12,188

The OMB Director is a member of the Trade Policy Committee.

Executive Order 12188—International trade functions

SOURCE: The provisions of Executive Order 12188 of Jan. 2, 1980, appear at 45 FR 989, 3 CFR, 1980 Comp., p. 131, unless otherwise noted.

By the authority vested in me by the Trade Agreements Act of 1979, the Trade Act of 1974, the Trade Expansion Act of 1962, section 350 of the Tariff Act of 1930, Reorganization Plan No. 3 of 1979, and section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

* * *

SEC. 1-102. *The Trade Policy Committee.*

(a) As provided by section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872), the Trade Policy Committee (hereinafter referred to as the "Committee") is continued. The Committee shall have the functions specified by law or by the President, including those specified in section 1(b)(3) of Reorganization Plan No. 3 of 1979.

(b) The Committee shall be composed of the following:

(1) The Trade Representative, who shall be Chair
(2) The Secretary of Commerce, who shall be Vice Chair
(3) The Secretary of State
(4) The Secretary of the Treasury
(5) The Secretary of Defense
(6) The Attorney General
(7) The Secretary of the Interior
(8) The Secretary of Agriculture
(9) The Secretary of Labor
(10) The Secretary of Transportation
(11) The Secretary of Energy
(12) The Director of the Office of Management and Budget
(13) The Chairman of the Council of Economic Advisers
(14) The Assistant to the President for National Security Affairs
(15) The Director of the United States International Development Cooperation Agency.

The Chair and any member of the Committee may designate a subordinate officer whose status is not below that of an Assistant Secretary to serve in his stead when he is unable to attend any meetings of the Committee. The Chair may invite representatives from other agencies to attend the meetings of the Committee.

40. E.O. 12,196

OMB must approve basic program element directives with respect to employee occupational health and safety programs of Federal agencies to be issued by the Secretary of Labor. The Secretary must also maintain liason with OMB.

Executive Order 12196—Occupational safety and health programs for Federal employees

SOURCE: The provisions of Executive Order 12196 of Feb. 26, 1980, appear at 45 FR 12769, 3 CFR, 1980 Comp., p. 145, unless otherwise noted.

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 7902(c) of Title 5 of the United States Code and in accord with Section 19 of the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. 668), it is ordered:

1-1. *Scope of this Order.*

1-101. This order applies to all agencies of the Executive Branch except military personnel and uniquely military equipment, systems, and operations.

1-102. For the purposes of this order, the term "agency" means an Executive department, as defined in 5 U.S.C. 101, or any employing unit or authority of the Federal government, other than those of the judicial and legislative branches. Since section 19 of the Occupational Safety and Health Act ("the Act") covers all Federal employees, however, the Secretary of Labor ("the Secretary") shall cooperate and consult with the heads of agencies in the legislative and judicial branches of the government to help them adopt safety and health programs.

* * *

1-4. *Department of Labor.*

1-401. The Secretary of Labor shall:

(a) Provide leadership and guidance to the heads of agencies to assist them with their occupational safety and health responsibilities.

(b) Maintain liaison with the Office of Management and Budget in matters relating to this order and coordinate the activities of the Department with those of other agencies that have responsibilities or functions related to Federal employee safety and health, including the Office of Personnel Management, the Department of Health, Education, and Welfare,[1] and the General Services Administration.

(c) Issue, subject to the approval of the Director of the Office of Management and Budget, and in consultation with the Federal Advisory Council on Occupational Safety and Health, a set of basic program elements. The program elements shall help agency heads establish occupational safety and health committees and operate effective occupational safety and health programs, and shall provide flexibility to each agency head to implement a program consistent with its mission, size and organization. Upon request of an agency head, and after consultation with the Federal Advisory Council on Occupational Safety and Health, the Secretary may approve alternate program elements.

41. E.O. 12,220

OMB may fix the amount of foreign currencies to be used for the purposes set forth in 7 U.S.C. 1704 that may accrue under 7 U.S.C. 1701 relating to the sale of agricultural commodities to friendly countries.

Executive Order 12220—Agricultural trade development

SOURCE: The provisions of Executive Order 12220 of June 27, 1980, appear at 45 FR 44245, 3 CFR, 1980 Comp., p. 263, unless otherwise noted.

By the authority vested in me as President of the United States of America by the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1691, *et seq.*) and Section 301 of Title 3 of the United States Code, and in order to provide for the delegation of certain functions to the United States International Development Cooperation Agency and to revise existing delegations, it is hereby ordered as follows:

* * *

1-4. *Foreign Currencies.*

1-401. (a) Foreign currencies which accrue under Title I of the Act (7 U.S.C. 1701, *et seq.*) may be used for the purposes set forth in Section 104 of the Act (7 U.S.C. 1704) in amounts consistent with applicable provisions of law, sales agreements and loan assessments. Except as may be inconsistent with such law or agreements, priority shall be accorded to the sale of such currencies to appropriations or to their sale otherwise for dollars. The Director of the Office of Management and Budget shall fix the amounts of such currencies to be used for the purpose set forth in Section 104 of the Act. The Director of the Office of Management and Budget shall notify the Secretary of the Treasury with respect to any amounts so fixed.

(b) The function vested in the President by the penultimate proviso of Section 104 of the Act (7 U.S.C. 1704) of waiving the applicability of Section 1415 of the Supplemental Appropriation Act of 1953 (31 U.S.C. 724) is delegated to the Director of the United States International Development Cooperation Agency with respect to Section 104(e) of the Act and to the Director of the Office of Management and Budget in all other respects.

1-402. The Secretary of the Treasury shall issue regulations governing the purchase, custody, deposit, transfer and sale of foreign currencies received under the Act.

1-403. The provisions of Section 1-401 and 1-402 of this Order shall not limit Sections 1-202 and 1-3 of this Order. The provisions of Section 1-402 of this Order shall not limit Section 1-401 of this Order.

1-404. The purposes of the following paragraphs of Section 104 of the Act (7 U.S.C. 1704) shall be carried out as follows:

(a) Those under paragraph (a) by the agencies with authority to pay the United States' obligations abroad.

(b) Those under paragraph (b)(1) by the Department of Agriculture.

(c) Those under paragraph (b)(2) by the agencies with responsibility for such functions.

(d) Those under paragraph (b)(3) of the Act as follows:

(1) Those with respect to collecting, collating, translating, abstracting, and disseminating scientific and technological information by the Director of the National Science Foundation and the head of such other agency or agencies as the Director of the Office of Management and Budget may designate after appropriate consultation;

(2) Those with respect to programs of culture and educational development, health, nutrition, and sanitation by the Director of the International Communication Agency,[1] the Department of State, and the head of any other appropriate agency;

(3) All others by such agency or agencies as the Director of the Office of Management and Budget may designate after appropriate consultation.

(4) The term "appropriate consultation" shall include consultation with the Secretary of State, the Director of the National Science Foundation, and the head of any other appropriate agency.

42. E.O. 12,250

The Attorney General reports to OMB annually with respect to his progress in coordinating consistent and effective implementation of laws prohibiting discriminatory practices in Federal programs and programs receiving financial assistance.

Executive Order 12250—Leadership and coordination of nondiscrimination laws

SOURCE: The provisions of Executive Order 12250 of Nov. 2, 1980, appear at 45 FR 72995, 3 CFR, 1980 Comp., p. 298, unless otherwise noted.

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), and Section 301 of Title 3 of the United States Code, and in order to provide, under the leadership of the Attorney General, for the consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, it is hereby ordered as follows:

* * *

1-3. *Implementation by the Attorney General.*

1-301. In consultation with the affected agencies, the Attorney General shall promptly prepare a plan for the implementation of this Order. This plan shall be submitted to the Director of the Office of Management and Budget.

1-302. The Attorney General shall periodically evaluate the implementation of the nondiscrimination provisions of the laws covered by this Order, and advise the heads of the agencies concerned on the results of such evaluations as to recommendations for needed improvement in implementation or enforcement.

1-303. The Attorney General shall carry out his functions under this Order, including the issuance of such regulations as he deems necessary, in consultation with affected agencies.

1-304. The Attorney General shall annually report to the President through the Director of the Office of Management and Budget on the progress in achieving the purposes of this Order. This report shall include any recommendations for changes in the implementation or enforcement of the nondiscrimination provisions of the laws covered by this Order.

1-305. The Attorney General shall chair the Interagency Coordinating Council established by Section 507 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794c).

43. E.O. 12,291

Establishes OMB as central clearinghouse for all executive branch agency (except independent regulatory agencies) rulemaking activities pursuant to 5 U.S.C. 553. OMB is vested with substantial authority for meaningful intervention into, and direction of, the rulemaking process at all stages.

Executive Order 12291—Federal regulation

SOURCE: The provisions of Executive Order 12291 of Feb. 17, 1981, appear at 46 FR 13193, 3 CFR, 1981 Comp., p. 127, unless otherwise noted.

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to reduce the burdens of existing and future regulations, increase agency accountability for regulatory actions, provide for presidential oversight of the regulatory process, minimize duplication and conflict of regulations, and insure well-reasoned regulations, it is hereby ordered as follows:

SECTION 1. *Definitions.* For the purposes of this Order:

(a) "Regulation" or "rule" means an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency, but does not include:

(1) Administrative actions governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code;

(2) Regulations issued with respect to a military or foreign affairs function of the United States; or

(3) Regulations related to agency organization, management, or personnel.

(b) "Major rule" means any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(c) "Director" means the Director of the Office of Management and Budget.

(d) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), excluding those agencies specified in 44 U.S.C. 3502(10).

(e) "Task Force" means the Presidential Task Force on Regulatory Relief.

SEC. 2. *General Requirements.* In promulgating new regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, all agencies, to the extent permitted by law, shall adhere to the following requirements:

(a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;

(b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;

(c) Regulatory objectives shall be chosen to maximize the net benefits to society;

(d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

(e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

SEC. 3. *Regulatory Impact Analysis and Review.*

(a) In order to implement Section 2 of this Order, each agency shall, in connection with every major rule, prepare, and to the extent permitted by law consider, a Regulatory Impact Analysis. Such Analyses may be combined with any Regulatory Flexibility Analyses performed under 5 U.S.C. 603 and 604.

(b) Each agency shall initially determine whether a rule it intends to propose or to issue is a major rule, *provided that,* the Director, subject to the direction of the Task Force, shall have authority, in accordance with Sections 1(b) and 2 of this Order, to prescribe criteria for making such determinations, to order a rule to be treated as a major rule, and to require any set of related rules to be considered together as a major rule.

(c) Except as provided in Section 8 of this Order, agencies shall prepare Regulatory Impact Analyses of major rules and transmit them, along with all notices of proposed rulemaking and all final rules, to the Director as follows:

(1) If no notice of proposed rulemaking is to be published for a proposed major rule that is not an emergency rule, the agency shall prepare only a final Regulatory Impact Analysis, which shall be transmitted, along with the proposed rule, to the Director at least 60 days prior to the publication of the major rule as a final rule;

(2) With respect to all other major rules, the agency shall prepare a preliminary Regulatory Impact Analysis, which shall be transmitted, along with a notice of proposed rulemaking, to the Director at least 60 days prior to the publication of a notice of proposed rulemaking, and a final Regulatory Impact Analysis, which shall be transmitted along with the final rule at least 30 days prior to the publication of the major rule as a final rule;

(3) For all rules other than major rules, agencies shall submit to the Director, at least 10 days prior to publication, every notice of proposed rulemaking and final rule.

(d) To permit each proposed major rule to be analyzed in light of the requirements stated in Section 2 of this Order, each preliminary and final Regulatory Impact Analysis shall contain the following information:

(1) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits;

(2) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs;

(3) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;

(4) A description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of this potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted; and

(5) Unless covered by the description required under paragraph (4) of this subsection, an explanation of any legal reasons why the rule cannot be based on the requirements set forth in Section 2 of this Order.

(e) (1) The Director, subject to the direction of the Task Force, which shall resolve any issues raised under this Order or ensure that they are presented to the President, is authorized to review any preliminary or final Regulatory Impact Analysis, notice of proposed rulemaking, or final rule based on the requirements of this Order.

(2) The Director shall be deemed to have concluded review unless the Director advises an agency to the contrary under subsection (f) of this Section:

(A) Within 60 days of a submission under subsection (c)(1) or a submission of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under subsection (c)(2);

(B) Within 30 days of the submission of a final Regulatory Impact Analysis and a final rule under subsection (c)(2); and

(C) Within 10 days of the submission of a notice of proposed rulemaking or final rule under subsection (c)(3).

(f) (1) Upon the request of the Director, an agency shall consult with the Director concerning the review of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under this Order, and shall, subject to Section 8(a)(2) of this Order, refrain from publishing its preliminary Regulatory Impact Analysis or notice of proposed rulemaking until such review is concluded.

(2) Upon receiving notice that the Director intends to submit views with respect to any final Regulatory Impact Analysis or final rule, the agency shall, subject to Section 8(a)(2) of this Order, refrain from publishing its final Regulatory Impact Analysis or final rule until the agency has responded to the Director's views, and incorporated those views and the agency's response in the rulemaking file.

(3) Nothing in this subsection shall be construed as displacing the agencies' responsibilities delegated by law.

(g) For every rule for which an agency publishes a notice of proposed rulemaking, the agency shall include in its notice:

(1) A brief statement setting forth the agency's initial determination whether the proposed rule is a major rule, together with the reasons underlying that determination; and

(2) For each proposed major rule, a brief summary of the agency's preliminary Regulatory Impact Analysis.

(h) Agencies shall make their preliminary and final Regulatory Impact Analyses available to the public.

(i) Agencies shall initiate reviews of currently effective rules in accordance with the purposes of this Order, and perform Regulatory Impact Analyses of currently effective major rules. The Director, subject to the direction of the Task Force, may designate currently effective rules for review in accordance with this Order, and establish schedules for reviews and Analyses under this Order.

SEC. 4. *Regulatory Review.* Before approving any final major rule, each agency shall:

(a) Make a determination that the regulation is clearly within the authority delegated by law and consistent with congressional intent, and include in the FEDERAL REGISTER at the time of promulgation a memorandum of law supporting that determination.

(b) Make a determination that the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention to public comments in general and the comments of persons directly affected by the rule in particular.

SEC. 5. *Regulatory Agendas.*

(a) Each agency shall publish, in October and April of each year, an agenda of proposed regulations that the agency has issued or expects to issue, and currently effective rules that are under agency review pursuant to this Order. These agendas may be incorporated with the agendas published under 5 U.S.C. 602, and must contain at the minimum:

(1) A summary of the nature of each major rule being considered, the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any major rule for which the agency has issued a notice of proposed rulemaking;

(2) The name and telephone number of a knowledgeable agency official for each item on the agenda; and

(3) A list of existing regulations to be reviewed under the terms of this Order, and a brief discussion of each such regulation.

(b) The Director, subject to the direction of the Task Force, may, to the extent permitted by law:

(1) Require agencies to provide additional information in an agenda; and

(2) Require publication of the agenda in any form.

SEC. 6. *The Task Force and Office of Management and Budget.*

(a) To the extent permitted by law, the Director shall have authority, subject to the direction of the Task Force, to:

(1) Designate any proposed or existing rule as a major rule in accordance with Section 1(b) of this Order;

(2) Prepare and promulgate uniform standards for the identification of major rules and the development of Regulatory Impact Analyses;

(3) Require an agency to obtain and evaluate, in connection with a regulation, any additional relevant data from any appropriate source;

(4) Waive the requirements of Sections 3, 4, or 7 of this Order with respect to any proposed or existing major rule;

(5) Identify duplicative, overlapping and conflicting rules, existing or proposed, and existing or proposed rules that are inconsistent with the policies underlying statutes governing agencies other than the issuing agency or with the purposes of this Order, and, in each such case, require appropriate interagency consultation to minimize or eliminate such duplication, overlap, or conflict;

(6) Develop procedures for estimating the annual benefits and costs of agency regulations, on both an aggregate and economic or industrial sector basis, for purposes of compiling a regulatory budget;

(7) In consultation with interested agencies, prepare for consideration by the President recommendations for changes in the agencies' statutes; and

(8) Monitor agency compliance with the requirements of this Order and advise the President with respect to such compliance.

(b) The Director, subject to the direction of the Task Force, is authorized to establish procedures for the performance of all functions vested in the Director by this Order. The Director shall take appropriate steps to coordinate the implementation of the analysis, transmittal, review, and clearance provisions of this Order with the authorities and requirements provided for or imposed upon the Director and agencies under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Paperwork Reduction Plan Act of 1980, 44 U.S.C. 3501 *et seq.*

SEC. 7. *Pending Regulations.*

(a) To the extent necessary to permit reconsideration in accordance with this Order, agencies shall, except as provided in Section 8 of this Order, suspend or postpone the effective dates of all major rules that they have promulgated in final form as of the date of this Order, but that have not yet become effective, excluding:

(1) Major rules that cannot legally be postponed or suspended;

(2) Major rules that, for good cause, ought to become effective as final rules without reconsideration. Agencies shall prepare, in accordance with Section 3 of this Order, a final Regulatory Impact Analysis for each major rule that they suspend or postpone.

(b) Agencies shall report to the Director no later than 15 days prior to the effective date of any rule that the agency has promulgated in final form as of the date of this Order, and that has not yet become effective, and that will not be reconsidered under subsection (a) of this Section:

(1) That the rule is excepted from reconsideration under subsection (a), including a brief statement of the legal or other reasons for that determination; or

(2) That the rule is not a major rule.

(c) The Director, subject to the direction of the Task Force, is authorized, to the extent permitted by law, to:

(1) Require reconsideration, in accordance with this Order, of any major rule that an agency has issued in final form as of the date of this Order and that has not become effective; and

(2) Designate a rule that an agency has issued in final form as of the date of this Order and that has not yet become effective as a major rule in accordance with Section 1(b) of this Order.

(d) Agencies may, in accordance with the Administrative Procedure Act and other applicable statutes, permit major rules that they have issued in final form as of the date of this Order, and that have not yet become effective, to take effect as interim rules while they are being reconsidered in accordance with this Order, *provided that*, agencies shall report to the Director, no later than 15 days before any such rule is proposed to take effect as an interim rule, that the rule should appropriately take effect as an interim rule while the rule is under reconsideration.

(e) Except as provided in Section 8 of this Order, agencies shall, to the extent permitted by law, refrain from promulgating as a final rule any proposed major rule that has been published or issued as of the date of this Order until a final Regulatory Impact Analysis, in accordance with Section 3 of this Order, has been prepared for the proposed major rule.

(f) Agencies shall report to the Director, no later than 30 days prior to promulgating as a final rule any proposed rule that the agency has published or issued as of the date of this Order and that has not been considered under the terms of this Order:

(1) That the rule cannot legally be considered in accordance with this Order, together with a brief explanation of the legal reasons barring such consideration; or

(2) That the rule is not a major rule, in which case the agency shall submit to the Director a copy of the proposed rule.

(g) The Director, subject to the direction of the Task Force, is authorized, to the extent permitted by law, to:

(1) Require consideration, in accordance with this Order, of any proposed major rule that the agency has published or issued as of the date of this Order; and

(2) Designate a proposed rule that an agency has published or issued as of the date of this Order, as a major rule in accordance with Section 1(b) of this Order.

(h) The Director shall be deemed to have determined that an agency's report to the Director under subsections (b), (d), or (f) of this Section is consistent with the purposes of this Order, unless the Director advises the agency to the contrary:

(1) Within 15 days of its report, in the case of any report under subsections (b) or (d); or

(2) Within 30 days of its report, in the case of any report under subsection (f).

(i) This Section does not supersede the President's Memorandum of January 29, 1981, entitled "Postponement of Pending Regulations", which shall remain in effect until March 30, 1981.

(j) In complying with this Section, agencies shall comply with all applicable provisions of the Administrative Procedure Act, and with any other procedural requirements made applicable to the agencies by other statutes.

SEC. 8. *Exemptions.*

(a) The procedures prescribed by this Order shall not apply to:

(1) Any regulation that responds to an emergency situation, *provided that,* any such regulation shall be reported to the Director as soon as is practicable, the agency shall publish in the FEDERAL REGISTER a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency shall prepare and transmit as soon as is practicable a Regulatory Impact Analysis of any such major rule; and

(2) Any regulation for which consideration or reconsideration under the terms of this Order would conflict with deadlines imposed by statute or by judicial order, *provided that,* any such regulation shall be reported to the Director together with a brief explanation of the conflict, the agency shall publish in the FEDERAL REGISTER a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency, in consultation with the Director, shall adhere to the requirements of this Order to the extent permitted by statutory or judicial deadlines.

(b) The Director, subject to the direction of the Task Force, may, in accordance with the purposes of this Order, exempt any class or category of regulations from any or all requirements of this Order.

SEC. 9. *Judicial Review.* This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person. The determinations made by agencies under Section 4 of this Order, and any Regulatory Impact Analyses for any rule, shall be made part of the whole record of agency action in connection with the rule.

SEC. 10. *Revocations.* Executive Orders No. 12044, as amended, and No. 12174 are revoked.

44. E.O. 12,293

The Secretary of State must consult with, and report to, OMB about his activities ensuring compatibility between the foreign service personnel system and other government personnel systems, and his recommendations regarding maintenance of conformity between the Civil Service and Foreign Service Retirement and Disability systems. OMB is made a member of the Board of the Foregin Service.

Executive Order 12293—The Foreign Service of the United States

SOURCE: The provisions of Executive Order 12293 of Feb. 23, 1981, appear at 46 FR 13969, 3 CFR, 1981 Comp., p. 137, unless otherwise noted.

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Foreign Service Act of 1980 (94 Stat. 2071, 22 U.S.C. 3901 *et seq.*), Section 202 of the Revised Statutes (22 U.S.C. 2656), and Section 301 of Title 3 of the United States Code, and in order to provide for the administration of the Foreign Service of the United States, it is hereby ordered as follows:

SECTION 1. There are hereby delegated to the Secretary of State those functions vested in the President by Sections 205, 401(a), 502(c), 613, and 801 of the Foreign Service Act of 1980, hereinafter referred to as the Act (22 U.S.C. 3925, 3942(a)(1), 3892(c), 4013, and 4041).

SEC. 2. The Secretary of State shall, in accord with Section 205 of the Act (22 U.S.C. 3925), consult with the Secretary of Agriculture, the Secretary of Commerce, the Director of the United States Information Agency, the Director of the United States International Development Cooperation Agency, the Director of the Office of Personnel Management, and the Director of the Office of Management and Budget, in order to ensure compatibility between the Foreign Service personnel system and other government personnel systems.

[Sec. 2 amended by EO 12388 of Oct. 14, 1982, 47 FR 46245, 3 CFR, 1982 Comp., p. 225]

SEC. 3. The Secretary of State shall make recommendations to the President through the Director of the Office of Management and Budget whenever action is appropriate under Section 827 of the Act (22 U.S.C. 4067) to maintain existing conformity between the Civil Service Retirement and Disability System and the Foreign Service Retirement and Disability System.

* * *

SEC. 9. (a) Pursuant to Section 210 of the Act there is established in the Department of State the Board of the Foreign Service (22 U.S.C. 3930).

(b) The Board shall be composed of the designated number of representatives of the heads of the following agencies:

(1) Department of State, four members, at least three of whom must be career members of the Senior Foreign Service;

(2) United States Information Agency, two members, one of whom must be a career member of the Senior Foreign Service;

(3) United States International Development Cooperation Agency, two members, one of whom must be a career member of the Senior Foreign Service;

(4) Department of Agriculture, two members, one of whom must be a career member of the Senior Foreign Service;

(5) Department of Commerce, two members, one of whom must be a career member of the Senior Foreign Service;

(6) Department of Labor, one member;

(7) Office of Personnel Management, one member;

(8) Office of Management and Budget, one member; and,

(9) Equal Employment Opportunity Commission, one member;

(c) The membership of the Board shall be selected from among officials who are knowledgeable in matters concerning the management of the Foreign Service. Except for the career members of the Senior Foreign Service from the Department of Agriculture, the Department of Commerce, the United States Information Agency, and the United States International Development Cooperation Agency, the members of the Board shall be selected from among those who have the rank of Assistant Secretary or higher or a position of comparable responsibility.

45. E.O. 12,301

The Deputy Director of OMB is made Chairman of the President's Council on Integrity and Efficiency whose purpose is to plan and coordinate government-wide activities against fraud and corruption.

Executive Order 12301—Integrity and efficiency in Federal programs

SOURCE: The provisions of Executive Order 12301 of Mar. 26, 1981, appear at 46 FR 19211, 3 CFR, 1981 Comp., p. 144, unless otherwise noted.

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to coordinate and implement Government policies with respect to integrity and efficiency in Federal programs, it is hereby ordered as follows:

SECTION 1. *Establishment of the President's Council on Integrity and Efficiency.* (a) There is established as an interagency committee the President's Council on Integrity and Efficiency.

(b) The Council shall be composed of the following members:

(1) The Deputy Director of the Office of Management and Budget who shall be Chairman of the Council;

(2) The Deputy Attorney General;

(3) The Director of the Office of Personnel Management;

(4) The Executive Assistant Director of Investigations of the Federal Bureau of Investigation;

(5) Inspector General, Department of Energy;

(6) Inspector General, Department of Agriculture;

(7) Inspector General, Department of Housing and Urban Development;

(8) Inspector General, Department of Labor;

(9) Inspector General, Department of Transportation;

(10) Inspector General, Veterans Administration;

(11) Inspector General, Department of Health and Human Services;

(12) Inspector General, Department of Education;

(13) Inspector General of the Department of State and the Foreign Service;

(14) Inspector General, Department of Commerce;

(15) Inspector General, Department of the Interior;

(16) Inspector General, Community Services Administration;

(17) Inspector General, Environmental Protection Agency;

(18) Inspector General, General Services Administration;

(19) Inspector General, National Aeronautics and Space Administration;

(20) Inspector General, Small Business Administration;

(21) A designee of the Secretary of the Treasury;

(22) A designee of the Secretary of Defense, and

(23) A designee of the Director of the United States International Development Cooperation Agency.

(c) The Chairman shall, from time to time, invite the following to participate in meetings of the Council:

(1) The Comptroller General of the United States, and

(2) The Postmaster General of the United States.

SEC. 2. *Functions of the Council.* (a) The Council shall develop plans for coordinated government-wide activities which attack fraud and waste in government programs and operations.

(b) In order to ensure coordinated relationships between Federal, State and local government agencies, and nongovernment entities with respect to all matters relating to the promotion of economy and efficiency, the Council shall develop standards for the management, operation, and conduct of inspector general-type activities.

(c) Policies shall be developed by the Council which will ensure the establishment of a corps of well-trained and highly skilled auditors and investigators.

(d) The Council shall develop interagency audit and investigation programs and projects to deal efficiently and effectively with those problems concerning fraud and waste which exceed the capability or jurisdiction of an individual agency. The Council will recognize the pre-eminent role of the Department of Justice in matters involving law enforcement and litigation.

(e) The Council membership shall, to the extent of their own authority to do so, implement those coordinated plans, standards, policies, programs, and projects (1) in order to conduct and supervise audits and investigations relating to programs and operations of the Government, and (2) in order to promote economy, efficiency, and effectiveness in the administration of programs and operations of the Government, as well as to detect fraud and abuse in such programs and operations.

(f) The creation and operation of the Council shall not interfere with existing lines of authority and responsibility in the departments and agencies.

SEC. 3. *Responsibilities of the Chairman.* (a) The Chairman shall, in consultation with the members of the Council, establish procedures for the Council; and, he shall establish the agenda for Council activities.

(b) The Chairman shall, on behalf of the Council, report to the President on the activities of the Council. The Chairman shall advise the Council with respect to the reaction of the President on the Council's activities.

(c) The Chairman shall provide agency heads with summary reports of the activities of the Council.

(d) The Chairman shall establish such committees of the Council, including an executive committee, as he deems necessary or appropriate for the efficient conduct of Council functions. Committees of the Council may act for the Council in those areas that affect the membership of the committee.

(e) The Chairman shall be supported by the Associate Director for Management of the Office of Management and Budget who shall advise and assist the Chairman in the execution of the entire range of responsibilities set forth above.

46. E.O. 12,316

Amendments to the National Contingency Plan to provide implementing procedures for the coordination of response actions to releases of hazardous substances into the environment must be reviewed and approved by the OMB Director.

Executive Order 12316—Responses to environmental damage

SOURCE: The provisions of Executive Order 12316 of Aug. 14, 1981, appear at 46 FR 42237, 3 CFR, 1981 Comp., p. 168, unless otherwise noted.

By the authority vested in me as President of the United States of America by Section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (94 Stat. 2796; 42 U.S.C. 9615), it is hereby ordered as follows:

SECTION 1. *National Contingency Plan.* (a) The National Contingency Plan, hereinafter referred to as the NCP and which was originally published pursuant to Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321), shall be amended to contain the implementing procedures for the coordination of response actions to releases of hazardous substances into the environment.

(f) All amendments to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget.

47. E.O. 12,318

Reestablishes authority of OMB over statistical policy formulation and coordination in the Federal government. See also, E.O. 10,253.

Executive Order 12318—Statistical policy functions

SOURCE: The provisions of Executive Order 12318 of Aug. 21, 1981, appear at 46 FR 42833, 3 CFR, 1981 Comp., p. 173, unless otherwise noted.

By virtue of the authority vested in me as President by the Constitution and statutes of the United States, including Reorganization Plan No. 2 of 1970 (5 U.S.C. App. II), Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), Section 3(a) of the Paperwork Reduction Act of 1980 (Public Law 96-511, 94 Stat. 2825, 44 U.S.C. 3503 note), and Section 301 of Title 3 of the United States Code, and in order to transfer, redelegate, and reassign certain statistical policy functions from the Secretary of Commerce to the Director of the Office of Management and Budget, and to require redelegation of certain functions to the Administrator for the Office of Information and Regulatory Affairs, it is hereby ordered as follows:

SECTION 1.

[Sec. 1 amends EO 11541 of July 1, 1970, this chapter, p. 615. The amendment has been incorporated into that order.]

SEC. 2.

[Sec. 2 amends EO 10253 of July 11, 1951, this chapter, p. 614. The amendment has been incorporated into that order.]

SEC. 3.

[Sec. 3 amends EO 10033 of Feb. 8, 1949, this chapter, p. 612. The amendment has been incorporated into that order.]

SEC. 4. (a) Executive Order No. 12013 is revoked.

(b)

[Sec. 4(b) amends EO 11961 of Jan. 19, 1977, Chapter 31, p. 479. The amendment has been incorporated into that order.]

SEC. 5. The records, property, personnel, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred or reassigned from the Secretary of Commerce to the Director of the Office of Management and Budget by the delegations made in this Order, are hereby transferred to the Director of the Office of Management and Budget.

SEC. 6. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all steps necessary or appropriate to ensure or effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

SEC. 7. Any rules, regulations, orders, directives, circulars, or other actions taken pursuant to the functions transferred or reassigned from the Secretary of Commerce to the Director of the Office of Management and Budget by the delegations made in this Order, shall remain in effect until amended, modified, or revoked pursuant to the delegations made in this Order.

SEC. 8. This Order shall be effective August 23, 1981.

48. E.O. 12,322

All reports, plans, or proposals relating to Federal or federally assisted water and related land resources projects submitted to the Congress must be submitted beforehand for review and advice by OMB and when submitted to the Congress it must contain the advice received.

Executive Order 12322—Water resources projects

SOURCE: The provisions of Executive Order 12322 of Sept. 17, 1981, appear at 46 FR 46561, 3 CFR, 1981 Comp., p. 178, unless otherwise noted.

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure efficient and coordinated planning and review of water resources programs and projects, it is hereby ordered as follows:

SECTION 1. Before any agency or officer thereof submits to the Congress, or to any committee or member thereof, for approval, appropriations, or legislative action any report, proposal, or plan relating to a Federal or Federally assisted water and related land resources project or program, such report, proposal, or plan shall be submitted to the Director of the Office of Management and Budget.

SEC. 2. The Director of the Office of Management and Budget shall examine each report, proposal, or plan for consistency with, and shall advise the agency of the relationship of the project to, the following:

(a) the policy and programs of the President;

(b) the Principles and Standards for Water and Related Land Resources Planning (Part 711 of Title 18 of the Code of Federal Regulations (45 F.R. 64366)), or other such planning guidelines for water and related land resources planning, as shall hereafter be issued; and

(c) other applicable laws, regulations, and requirements relevant to the planning process.

SEC. 3. When such report, proposal, or plan is thereafter submitted to the Congress, or to any committee or member thereof, it shall include a statement of the advice received from the Office of Management and Budget.

SEC. 4. Executive Order No. 12113, as amended, is revoked.

49. E.O. 12,333

The Director of the Central Intelligence Agency reviews and approves all requests for reprogramming National Foreign Intelligence Program funds in accordance with guidelines established by OMB.

Executive Order 12333—United States intelligence activities

SOURCE: The provisions of Executive Order 12333 of Dec. 4, 1981, appear at 46 FR 59941, 3 CFR, 1981 Comp., p. 200, unless otherwise noted.

* * *

1.5 *Director of Central Intelligence.* In order to discharge the duties and responsibilities prescribed by law, the Director of Central Intelligence shall be responsible directly to the President and the NSC and shall:

* * *

(o) Review and approve all requests for reprogramming National Foreign Intelligence Program funds, in accordance with guidelines established by the Office of Management and Budget;

50. E.O. 12,336

OMB is a member of the Task Force on Legal Equity for Women.

Executive Order 12336—The Task Force on Legal Equity for Women

SOURCE: The provisions of Executive Order 12336 of Dec. 21, 1981, appear at 46 FR 62239, 3 CFR, 1981 Comp., p. 219, unless otherwise noted.

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for the systematic elimination of regulatory and procedural barriers which have unfairly precluded women from receiving equal treatment from Federal activities, it is hereby ordered as follows:

SECTION 1. *Establishment.* (a) There is established the Task Force on Legal Equity for Women.

(b) The Task Force members shall be appointed by the President from among nominees by the heads of the following Executive agencies, each of which shall have one representative on the Task Force.

(1) Department of State.
(2) Department of The Treasury.
(3) Department of Defense.
(4) Department of Justice.
(5) Department of The Interior.
(6) Department of Agriculture.
(7) Department of Commerce.
(8) Department of Labor.
(9) Department of Health and Human Services.
(10) Department of Housing and Urban Development.
(11) Department of Transportation.
(12) Department of Energy.
(13) Department of Education.
(14) Agency for International Development.
(15) Veterans Administration.
(16) Office of Management and Budget.
(17) International Communication Agency.
(18) Office of Personnel Management.
(19) Environmental Protection Agency.
(20) ACTION.
(21) Small Business Administration.

(c) The President shall designate one of the members to chair the Task Force. Other agencies may be invited to participate in the functions of the Task Force.

SEC. 2. *Functions.* (a) The members of the Task Force shall be responsible for coordinating and facilitating in their respective agencies, under the direction of the head of their agency, the implementation of changes ordered by the President in sex-discriminatory Federal regulations, policies, and practices.

(b) The Task Force shall periodically report to the President on the progress made throughout the Government in implementing the President's directives.

(c) The Attorney General shall complete the review of Federal laws, regulations, policies, and practices which contain language that unjustifiably differentiates, or which effectively discriminates, on the basis of sex. The Attorney General or his designee shall, on a quarterly basis, report his findings to the President through the Cabinet Council on Legal Policy.

[Sec. 2 amended by EO 12355 of Apr. 1, 1982, 47 FR 14479, 3 CFR, 1982 Comp., p. 165]

SEC. 3. *Administration.* (a) The head of each Executive agency shall, to the extent permitted by law, provide the Task Force with such information and advice as the Task Force may identify as being useful to fulfill its functions.

(b) The agency with its representative chairing the Task Force shall, to the extent permitted by law, provide the Task Force with such administrative support as may be necessary for the effective performance of its functions.

(c) The head of each agency represented on the Task Force shall, to the extent permitted by law, furnish its representative such administrative support as is necessary and appropriate.

SEC. 4. *General Provisions.* (a) Section 1-101(h) of Executive Order No. 12258, as amended, is revoked.

(b) Executive Order No. 12135 is revoked.

(c) Section 6 of Executive Order No. 12050, as amended, is revoked.

51. E.O. 12,348

The OMB Director is a member of the Property Review Board.

Executive Order 12348—Federal real property

SOURCE: The provisions of Executive Order 12348 of Feb. 25, 1982, appear at 47 FR 8547, 3 CFR, 1982 Comp., p. 134, unless otherwise noted.

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 205(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(a)), in order to improve management of Federal real property, it is hereby ordered as follows:

SECTION 1. (a) There is hereby established a Property Review Board.

(b) The members of the Board shall be the Counsellor to the President; Director, Office of Management and Budget; Chairman, Council of Economic Advisers; Assistant to the President for Policy Development; Chief of Staff and Assistant to the President; Assistant to the President for National Security Affairs; and such other officers or employees of the Executive branch as the President may from time to time designate. One of the members of the Board shall be designated by the President as Chairman.

(c) Staff, including an Executive Director, and other administrative support shall be provided from resources available to the President.

SEC. 2. The Board shall perform such functions as may be directed by the President, including the following:

(a) develop and review Federal real property acquisition, utilization, and disposal policies with respect to their relationship to other Federal policies;

(b) advise the Administrator of General Services with respect to such standards and procedures for executive agencies that are necessary to ensure that real property holdings no longer essential to their activities and responsibilities are promptly identified and released for appropriate disposition;

(c) review and examine prior disposals of surplus property for public benefit discount conveyances to ensure that the property is being used and maintained for the purpose for which it was conveyed;

(d) receive the surveys and reports made by or to the Administrator of General Services pursuant to Sections 3 and 4 of this Order as well as other reports on Federal real property that are requested by the Board, with particular attention to resolution of conflicting claims on, and alternate uses for, any property described in those reports, consistent with laws governing Federal real property;

(e) provide guidance to the Administrator of General Services in accord with Section 6 of this Order;

(f) establish for each Executive agency annually the target amount of its real property holdings to be identified as excess; and

(g) submit such recommendations and reports to the President as may be appropriate.

SEC. 3. (a) All Executive agencies shall periodically review their real property holdings and conduct surveys of such property in accordance with standards and procedures determined by the Administrator of General Services pursuant to Section 206 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 487), and this Order.

(b) The head of each Executive agency, within 60 days of the date of this Order, shall report to the Administrator of General Services and the Board the agency's real property holdings which, in his judgment, are not utilized, are underutilized, or are not being put to optimum use.

(c) The head of each Executive agency shall identify, and report to the Board, all those properties which can be considered for disposition in response to the targets established by the Board in subsection 2(f) of this Order.

SEC. 4. The Administrator of General Services in consultation with the Board shall issue standards and procedures, conduct surveys, and cause surveys to be conducted, to ensure that the real property holdings of Executive agencies shall continually be evaluated with special emphasis on the identification of properties that are not utilized, are underutilized, or are not being put to optimum use. The Administrator shall consult with the Board and appropriate Executive agencies in order to (a) identify real property that is excess or surplus to the needs of the Executive agencies, and (b) make such real property available for its most beneficial use under the various laws of the United States affecting such property.

SEC. 5. The Administrator of General Services shall report to the Board with respect to any property or, portion thereof which has not been reported excess to the requirements of the holding agency and which, in the judgment of the Administrator, is not utilized, is underutilized, or is not being put to optimum use, and which he recommends should be reported as excess property.

SEC. 6. Before the Administrator of General Services assigns or conveys property for public benefit discount conveyances, he shall first consult with the Board and consider such guidance as it may provide.

SEC. 7. The Administrator of General Services shall, to the extent permitted by law, provide necessary advice and assistance to the Board to accomplish the objectives of this Order.

SEC. 8. Executive Order No. 11954, as amended, is revoked.

52. E.O. 12,352

The OMB Director, through the Office of Federal Procurement Policy, provides policy guidance and overall leadership to accomplish procurement reform.

Executive Order 12352—Federal procurement reforms

SOURCE: The provisions of Executive Order 12352 of Mar. 17, 1982, appear at 47 FR 12125, 3 CFR, 1982 Comp., p. 137, unless otherwise noted.

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure effective and efficient spending of public funds through fundamental reforms in Government procurement, it is hereby ordered as follows:

SECTION 1. To make procurement more effective in support of mission accomplishment, the heads of executive agencies engaged in the procurement of products and services from the private sector shall:

(a) Establish programs to reduce administrative costs and other burdens which the procurement function imposes on the Federal Government and the private sector. Each program shall take into account the need to eliminate unnecessary agency procurement regulations, paperwork, reporting requirements, solicitation provisions, contract clauses, certifications, and other administrative procedures. Private sector views on needed changes should be solicited as appropriate;

(b) Strengthen the review of programs to balance individual program needs against mission priorities and available resources;

(c) Ensure timely satisfaction of mission needs at reasonable prices by establishing criteria to improve the effectiveness of procurement systems;

(d) Establish criteria for enhancing effective competition and limiting noncompetitive actions. These criteria shall seek to improve competition by such actions as eliminating unnecessary Government specifications and simplifying those that must be retained, expanding the purchase of available commercial goods and services, and, where practical, using functionally-oriented specifications or otherwise describing Government needs so as to permit greater latitude for private sector response;

(e) Establish programs to simplify small purchases and minimize paperwork burdens imposed on the private sector, particularly small businesses;

(f) Establish administrative procedures to ensure that contractors, especially small businesses, receive timely payment;

(g) Establish clear lines of contracting authority and accountability;

(h) Establish career management programs, covering the full range of personnel management functions, that will result in a highly qualified, well managed professional procurement work force; and

(i) Designate a Procurement Executive with agency-wide responsibility to oversee development of procurement systems, evaluate system performance in accordance with approved criteria, enhance career management of the procurement work force, and certify to the agency head that procurement systems meet approved criteria.

SEC. 2. The Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration shall continue their joint efforts to consolidate their common procurement regulations into a single simplified Federal Acquisition Regulation (FAR) by the end of calendar year 1982.

SEC. 3. The Director of the Office of Personnel Management, in consultation with the heads of executive agencies, shall ensure that personnel policies and classification standards meet the needs of executive agencies for a professional procurement work force.

SEC. 4. The Director of the Office of Management and Budget, through the Office of Federal Procurement Policy as appropriate, shall work jointly with the heads of executive agencies to provide broad policy guidance and overall leadership necessary to achieve procurement reform, encompassing:

(a) Identifying desirable Government-wide procurement system criteria, such as minimum requirements for training and appointing contracting officers;

(b) Facilitating the resolution of conflicting views among those agencies having regulatory authority with respect to Government-wide procurement regulations;

(c) Assisting executive agencies in streamlining guidance for procurement processes;

(d) Assisting in the development of criteria for procurement career management programs;

(e) Facilitating interagency coordination of common procurement reform efforts;

(f) Identifying major inconsistencies in law and policies relating to procurement which impose unnecessary burdens on the private sector and Federal procurement officials; and, following coordination with executive agencies, submitting necessary legislative initiatives for the resolution of such inconsistencies; and

(g) Reviewing agency implementation of the provisions of this Executive Order and keeping me informed of progress and accomplishments.

53. E.O. 12,356

The OMB Director is authorized to classify information as Top Secret.

Executive Order 12356—National security information

SOURCE: The provisions of Executive Order 12356 of Apr. 2, 1982, appear at 47 FR 14874 and 15557, 3 CFR, 1982 Comp., p. 166, unless otherwise noted.

* * *

This Order prescribes a uniform system for classifying, declassifying, and safeguarding national security information. It recognizes that it is essential that the public be informed concerning the activities of its Government, but that the interests of the United States and its citizens require that certain information concerning the national defense and foreign relations be protected against unauthorized disclosure. Information may not be classified under this Order unless its disclosure reasonably could be expected to cause damage to the national security.

NOW, by the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered as follows:

* * *

SEC. 1.2 *Classification Authority.*[1]

(a) *Top Secret.* The authority to classify information originally as Top Secret may be exercised only by:

(1) the President;

(2) agency heads and officials designated by the President in the FEDERAL REGISTER; and

(3) officials delegated this authority pursuant to Section 1.2(d).

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[1] EDITORIAL NOTE: On May 7, 1982, the President issued an order of designation (47 FR 20105, 3 CFR, 1982 Comp., p. 257) the text of which follows:

Pursuant to the provisions of Section 1.2 of Executive Order No. 12356 of April 2, 1982, entitled "National Security Information," I hereby designate the following officials to classify information originally as "Top Secret", "Secret", or "Confidential":

TOP SECRET

Executive Office of the President:

- The Vice President
- The Counsellor to the President
- The Chief of Staff and Assistant to the President
- The Deputy Chief of Staff and Assistant to the President
- The Director, Office of Management and Budget
- The United States Trade Representative
- The Assistant to the President for National Security Affairs
- The Director, Office of Science and Technology Policy
- The Chairman, The President's Foreign Intelligence Advisory Board
- The Chairman, The President's Intelligence Oversight Board

The Secretary of State
The Secretary of the Treasury
The Secretary of Defense
The Secretary of the Army
The Secretary of the Navy
The Secretary of the Air Force
The Attorney General
The Secretary of Energy
The Chairman, Nuclear Regulatory Commission
The Director, United States Arms Control and Disarmament Agency
The Director of Central Intelligence
The Administrator, National Aeronautics and Space Administration
The Administrator of General Services
The Director, Federal Emergency Management Agency

SECRET

Executive Office of the President:

- The Chairman, Council of Economic Advisers
- The President's Personal Representative for Micronesian Status Negotiations

The Secretary of Commerce
The Secretary of Transportation
The Administrator, Agency for International Development
The Director, International Communication Agency

CONFIDENTIAL

The President, Export-Import Bank of the United States
The President, Overseas Private Investment Corporation
The Administrator, Environmental Protection Agency

Any delegation of this authority shall be in accordance with Section 1.2(d) of the Order.

This Order shall be published in the FEDERAL REGISTER.

54. E.O. 12,372

To facilitate intergovernmental cooperation and to increase reliance on state and local processes for the state and local review of proposed Federal financial assistance and direct Federal development, OMB will maintain and disseminate a list of state and local entities cooperating, approve agency regulations implementing the order, and prescribe rules implementing the order and the Intergovernmental Cooperation Act of 1968.

Executive Order 12372—Intergovernmental review of Federal programs

SOURCE: The provisions of Executive Order 12372 of July 14, 1982, appear at 47 FR 30959, 3 CFR, 1982 Comp., p. 197, unless otherwise noted.

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401(a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(a)), Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

[Preamble amended by EO 12416 of Apr. 8, 1983, 48 FR 15587, 3 CFR, 1983 Comp., p. 186]

SECTION 1. Federal agencies shall provide opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development.

SEC. 2. To the extent the States, in consultation with local general purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for State and local elected officials to review and coordinate proposed Federal financial assistance and direct Federal development, the Federal agencies shall, to the extent permitted by law:

(a) Utilize the State process to determine official views of State and local elected officials.

(b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.

(c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.

(d) Allow the States to simplify and consolidate existing Federally required State plan submissions. Where State planning and budgeting systems are sufficient and where permitted by law, the substitution of State plans for Federally required State plans shall be encouraged by the agencies.

(e) Seek the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas. Existing interstate mechanisms that are redesignated as part of the State process may be used for this purpose.

(f) Support State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a Federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

SEC. 3. (a) The State process referred to in Section 2 shall include those where States delegate, in specific instances, to local elected officials the review, coordination, and communication with Federal agencies.

(b) At the discretion of the State and local elected officials, the State process may exclude certain Federal programs from review and comment.

SEC. 4. The Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. The Office of Management and Budget shall disseminate such lists to the Federal agencies.

SEC. 5. (a) Agencies shall propose rules and regulations governing the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development pursuant to this Order, to be submitted to the Office of Management and Budget for approval.

(b) The rules and regulations which result from the process indicated in Section 5(a) above shall replace any current rules and regulations and become effective September 30, 1983.

[Sec. 5 amended by EO 12416 of Apr. 8, 1983, 48 FR 15587, 3 CFR, 1983 Comp., p. 186]

SEC. 6. The Director of the Office of Management and Budget is authorized to prescribe such rules and regulations, if any, as he deems appropriate for the effective implementation and administration of this Order and the Intergovernmental Cooperation Act of 1968. The Director is also authorized to exercise the authority vested in the President by Section 401(a) of that Act (42 U.S.C. 4231(a)), in a manner consistent with this Order.

SEC. 7. The Memorandum of November 8, 1968, is terminated (33 *Fed. Reg.* 16487, November 13, 1968). The Director of the Office of Management and Budget shall revoke OMB Circular A-95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

SEC. 8. The Director of the Office of Management and Budget shall report to the President by September 30, 1984 on Federal agency compliance with this Order. The views of State and local elected officials on their experiences with these policies, along with any suggestions for improvement, will be included in the Director's report.

[Sec. 8 amended by EO 12416 of Apr. 8, 1983, 48 FR 15587, 3 CFR, 1983 Comp., p. 186]

55. E.O. 12,479

The Deputy Director of OMB is Chairman of the President's Council on Management Improvement.

Executive Order 12479—Management reform in the Federal Government

SOURCE: The provisions of Executive Order 12479 of May 24, 1984, appear at 49 FR 22053, 3 CFR, 1984 Comp., p. 211, unless otherwise noted.

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to coordinate and implement policies with respect to management reform in the Federal government, it is hereby ordered as follows:

SECTION 1. *Establishment of the President's Council on Management Improvement.*

(a) There is established as an interagency committee the President's Council on Management Improvement.

(b) The Council shall be composed of the following members:

(1) The Deputy Director of the Office of Management and Budget, who shall be Chairman of the Council;

(2) The Assistant Secretary for Administration, Department of Agriculture;

(3) The Assistant Secretary for Administration, Department of Commerce;

(4) The Assistant Secretary (Comptroller), Department of Defense;

(5) The Deputy Under Secretary for Management, Department of Education;

(6) The Assistant Secretary for Management and Administration, Department of Energy;

(7) The Assistant Secretary for Management and Budget, Department of Health and Human Services;

(8) The Assistant Secretary for Administration, Department of Housing and Urban Development;

(9) The Assistant Secretary for Policy, Budget and Administration, Department of the Interior;

(10) The Assistant Attorney General for Administration, Department of Justice;

(11) The Assistant Secretary for Administration and Management, Department of Labor;

(12) The Assistant Secretary for Administration, Department of State;

(13) The Assistant Secretary for Administration, Department of Transportation;

(14) The Assistant Secretary for Administration, Department of the Treasury;

(15) The Assistant to the Administrator for Management, Agency for International Development;

(16) The Assistant Administrator for Administration and Resources Management, Environmental Protection Agency;

(17) The Deputy Administrator, General Services Administration;

(18) The Associate Administrator for Management, National Aeronautics and Space Administration;

(19) The Associate Director for Management, Office of Management and Budget;

(20) The Associate Director for Administration, Office of Personnel Management;

(21) The Associate Deputy Administrator for Resource Management, Small Business Administration;

(22) The Associate Deputy Administrator for Information and Resources Management, Veterans' Administration;

(23) The Assistant to the President for Policy Development, or a Federal employee designated by that official, to advise on management and administration; and

(24) The Assistant to the President for Presidential Personnel, or a Federal employee designated by that official, to advise on human resource development.

SEC. 2. *Functions of the Council.* The Council shall:

(a) develop and oversee the implementation of improved management and administrative systems for government-wide application;

(b) formulate long-range plans to promote improvements in the management and administrative systems of the Federal government;

(c) identify specific department and agency management reforms applicable to other agencies and assist in their implementation;

(d) work to resolve interagency management problems; and

(e) work with the Office of Management and Budget, the General Services Administration and the Office of Personnel Management to ensure timely implementation and coordination of their policies.

In conducting these functions, the Council shall not interfere with existing lines of authority and responsibility in the departments and agencies.

SEC. 3. *Responsibilities of the Chairman.* The Chairman shall:

(a) establish, in consultation with the members of the Council, procedures for the Council and establish the agenda for Council activities;

(b) on behalf of the Council, report to the President; the goals and the results of the Council on management projects shall be reported to the President through the Cabinet Council on Management and Administration; the Chairman shall advise the Council with respect to the reaction of the President and the Cabinet Council to its activities;

(c) provide agency heads with summary reports of the activities of the Council;

(d) establish such committees of the Council, including an executive committee, as may be deemed necessary or appropriate for the efficient conduct of Council functions; committees of the Council may act for the Council in those areas that affect the membership of the committee;

(e) appoint Vice-Chairmen to one-year terms to assist the Chairman in representing the Council and perform duties as determined by the Chairman;

(f) appoint other Federal officials as at-large members to one-year terms to provide special expertise to the Council and perform duties as determined by the Chairman; and

(g) be supported by the Associate Director for Management of the Office of Management and Budget, who shall advise and assist the Chairman in the execution of the entire range of responsibilities set forth above and act for the Chairman in his absence.

SEC. 4. *Administrative Provisions.*

(a) The Director of the Office of Management and Budget shall provide the Council with such administrative support as may be necessary for the performance of its functions.

(b) The head of each agency represented on the Council shall provide its representative with such administrative support as may be necessary, in accordance with law, to enable the agency representative to carry out his or her responsibilities.

56. E.O. 12,498

All executive branch agencies (except independent regulatory agencies) are required to submit to OMB an annual program of proposed regulatory activities from which OMB may delete any activities which are not consistent with the Administration's policies and priorities. Any activity not included on the President's final Regulatory Program may not be undertaken by an agency without permission of OMB.

Executive Order 12498—Regulatory planning process

SOURCE: The provisions of Executive Order 12498 of Jan. 4, 1985, appear at 50 FR 1036, unless otherwise noted.

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to create a coordinated process for developing on an annual basis the Administration's Regulatory Program, establish Administration regulatory priorities, increase the accountability of agency heads for the regulatory actions of their agencies, provide for Presidential oversight of the regulatory process, reduce the burdens of existing and future regulations, minimize duplication and conflict of regulations, and enhance public and Congressional understanding of the Administration's regulatory objectives, it is hereby ordered as follows:

SECTION 1. *General Requirements.* (a) There is hereby established a regulatory planning process by which the Administration will develop and publish a Regulatory Program for each year. To implement this process, each Executive agency subject to Executive Order No. 12291 shall submit to the Director of the Office of Management and Budget (OMB) each year, starting in 1985, a statement of its regulatory policies, goals, and objectives for the coming year and information concerning all significant regulatory actions underway or planned; however, the Director may exempt from this Order such agencies or activities as the Director may deem appropriate in order to achieve the effective implementation of this Order.

(b) The head of each Executive agency subject to this Order shall ensure that all regulatory actions are consistent with the goals of the agency and of the Administration, and will be appropriately implemented.

(c) This program is intended to complement the existing regulatory planning and review procedures of agencies and the Executive branch, including the procedures established by Executive Order No. 12291.

(d) To assure consistency with the goals of the Administration, the head of each agency subject to this Order shall adhere to the regulatory principles stated in Section 2 of Executive Order No. 12291, including those elaborated by the regulatory policy guidelines set forth in the August 11, 1983, Report of the Presidential Task Force on Regulatory Relief, "Reagan Administration Regulatory Achievements."

SEC. 2. *Agency Submission of Draft Regulatory Program.* (a) The head of each agency shall submit to the Director an overview of the agency's regulatory policies, goals, and objectives for the program year and such information concerning all significant regulatory actions of the agency, planned or underway, including actions taken to consider whether to initiate rulemaking; requests for public comment; and the development of documents that may influence, anticipate, or could lead to the commencement of rulemaking proceedings at a later date, as the Director deems necessary to develop the Administration's Regulatory Program. This submission shall constitute the agency's draft regulatory program. The draft regulatory program shall be submitted to the Director each year, on a date to be specified by the Director, and shall cover the period from April 1 through March 31 of the following year.

(b) The overview portion of the agency's submission should discuss the agency's broad regulatory purposes, explain how they are consistent with the Administration's regulatory principles, and include a discussion of the significant regulatory actions, as defined by the Director, that it will take. The overview should specifically discuss the significant regulatory actions of the agency to revise or rescind existing rules.

(c) Each agency head shall categorize and describe the regulatory actions described in subsection (a) in such format as the Director shall specify and provide such additional information as the Director may request; however, the Director shall, by Bulletin or Circular, exempt from the requirements of this Order any class or category of regulatory action that the Director determines is not necessary to review in order to achieve the effective implementation of the program.

SEC. 3. *Review, Compilation, and Publication of the Administration's Regulatory Program.* (a) In reviewing each agency's draft regulatory program, the Director shall (i) consider the consistency of the draft regulatory program with the Administration's policies and priorities and the draft regulatory programs submitted by other agencies; and (ii) identify such further regulatory or deregulatory actions as may, in his view, be necessary in order to achieve such consistency. In the event of disagreement over the content of the agency's draft regulatory program, the agency head or the Director may raise issues for further review by the President or by such appropriate Cabinet Council or other forum as the President may designate.

(b) Following the conclusion of the review process established by subsection (a), each agency head shall submit to the Director, by a date to be specified by the Director, the agency's final regulatory plan for compilation and publication as the Administration's Regulatory Program for that year. The Director shall circulate a draft of the Administration's Regulatory Program for agency comment, review, and interagency consideration, if necessary, before publication.

(c) After development of the Administration's Regulatory Program for the year, if the agency head proposes to take a regulatory action subject to the provisions of Section 2 and not previously submitted for review under this process, or if the agency head proposes to take a regulatory action that is materially different from the action described in the agency's final Regulatory Program, the agency head shall immediately advise the Director and submit the action to the Director for review in such format as the Director may specify. Except in the case of emergency situations, as defined by the Director, or statutory or judicial deadlines, the agency head shall refrain from taking the proposed regulatory action until the review of this submission by the Director is completed. As to those regulatory actions not also subject to Executive Order No. 12291, the Director shall be deemed to have concluded that the proposal is consistent with the purposes of this Order, unless he notifies the agency head to the contrary within 10 days of its submission. As to those regulatory actions subject to Executive Order No. 12291, the Director's review shall be governed by the provisions of Section 3(e) of that Order.

(d) Absent unusual circumstances, such as new statutory or judicial requirements or unanticipated emergency situations, the Director may, to the extent permitted by law, return for reconsideration any rule submitted for review under Executive Order No. 12291 that would be subject to Section 2 but was not included in the agency's final Regulatory Program for that year; or any other significant regulatory action that is materially different from those described in the Administration's Regulatory Program for that year.

SEC. 4. *Office of Management and Budget.* The Director of the Office of Management and Budget is authorized, to the extent permitted by law, to take such actions as may be necessary to carry out the provisions of this Order.

SEC. 5. *Judicial Review.* This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person.

57. E.O. 12,512

OMB reviews agency efforts toward achieving cost effective and efficient government-wide real property management policies developed under the order. OMB, with GSA, is to develop legislative initiatives that adopt appropriate private sector management techniques.

Executive Order 12512 of April 29, 1985

Federal Real Property Management

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 486(a) of title 40 of the United States Code, and in order to ensure that Federal real property resources are treated in accordance with their value as national assets and in the best interests of the Nation's taxpayers, it is hereby ordered as follows:

Section 1. *General Requirements.* To ensure the effective and economical use of America's real property and public land assets, establish a focal point for the enunciation of clear and consistent Federal policies regarding the acquisition, management, and disposal of properties, and assure management accountability for implementing Federal real property management reforms, all Executive departments and agencies shall take immediate action to recognize the importance of such resources through increased management attention, establishment of clear goals and objectives, improved policies and levels of accountability, and other appropriate actions. Specifically:

(a) The Domestic Policy Council shall serve as the forum for approving government-wide real property management policies;

(b) All Executive departments and agencies shall establish internal policies and systems of accountability that ensure effective use of real property in support of mission-related activities, consistent with Federal policies regarding the acquisition, management, and disposal of such assets. All such agencies shall periodically review their real property holdings and conduct surveys of such property in accordance with standards and procedures determined by the Administrator of General Services. All such agencies shall also develop annual real property management improvement plans that include clear and concise goals and objectives related to all aspects of real property management, and identify sales, work space management, productivity, and excess property targets;

(c) The Director of the Office of Management and Budget shall review, through the management and budget review processes, the efforts of departments and agencies toward achieving the government-wide property management policies established pursuant to this Order. Savings achieved as a result of improved management shall be applied to reduce Federal spending and to support program delivery;

(d) The Office of Management and Budget and the General Services Administration shall, in consultation with the land managing agencies, develop legislative initiatives that seek to improve Federal real property management through the adoption of appropriate private sector management techniques; the elimination of duplication of effort among agencies; and the establishment of managerial accountability for implementing effective and efficient real property management practices; and

(e) The President's Council on Management Improvement, subject to the policy direction of the Domestic Policy Council, shall conduct such additional studies as are necessary to improve Federal real property management by appropriate agencies and groups.

58. E.O. 12,521

President delegates to OMB his reporting function with respect to offsets in military related exports.

Executive Order 12521 of June 24, 1985

Offsets in Military-Related Exports

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Defense Production Act of 1950, (50 U.S.C. App. 2061 *et seq.*), as amended by Public Law 98-265, and in order to provide for the performance of certain reporting functions with respect to the effect of offsets on international trade, it is hereby ordered that Section 602 of Executive Order No. 10480 of August 14, 1953, as amended, is further amended by adding the following new subsection:

"(d) (1) The functions conferred upon the President by Section 309 of the Defense Production Act, as amended, with respect to the preparation and submission of reports to the Congress concerning offsets shall be performed by the Director of the Office of Management and Budget (OMB). The Director may further delegate to the heads of Executive departments and agencies responsibility for preparing and submitting for his review particular sections of such reports. The heads of Executive departments and agencies shall, to the extent provided by law, provide the Director with such information as may be necessary for the effective performance of these functions.

"(2) In order to ensure that information gathered pursuant to this authority shall be subject to appropriate confidentiality protections, the United States International Trade Commission, which previously has been designated a 'central collection agency' in gathering this information under 44 U.S.C. 3509, is authorized, pursuant to Section 705 of the Defense Production Act, as amended, to collect the information required for compilation of the data base to be used in the preparation of the first such report to the Congress.".

Part III

Regulations

Few OMB directives are published in the Code of Federal Regulations (C.F.R.). The exceptions have occurred as a result of presidential order (document classification guidelines) or statutory requirement (Privacy Act, Freedom of Information Act, Paperwork Reduction Act). Those directives, found at 5 C.F.R. Part 13 (1985), are set forth below. Regulations dealing with OMB employee ethical conduct and past employment conflict of interest are not included and may be found at 5 C.F.R. Parts 1300 and 1304 respectively.

1. 5 C.F.R. Part 1301, Classification and Declassification of Information and Material

PART 1301—CLASSIFICATION AND DECLASSIFICATION OF INFORMATION AND MATERIAL

Sec.
1301.1 Introduction.
1301.2 Authority to classify.
1301.3 Downgrading and declassification.
1301.4 Review of classified material for declassification purposes.
1301.5 Burden of proof for administrative determinations.
1301.6 Availability of declassified material.
1301.7 Access by historical researchers.

AUTHORITY: E.O. 11652, 37 FR 5209; National Security Directive of May 17, 1972, 37 FR 10053.

SOURCE: 37 FR 26878, Dec. 14, 1972, unless otherwise noted.

§ 1301.1 Introduction.

The Office of Management and Budget has issued regulations relating to the classification and declassification of national security information and material under authority of Executive Order 11652 of March 9, 1972 (37 FR 5209), and National Security Council Directive of May 17, 1972 (37 FR 10053). These regulations were approved by the Interagency Classification Review Committee on October 17, 1972. Such parts of the regulations as affect the public are published herein as required by the above-cited Executive order and directive.

§ 1301.2 Authority to classify.

The authority to originally classify information or material under these regulations will be limited to those officials concerned with matters of national security. The following officials are granted authority by the Director to assign originally the top secret, secret, or confidential classifications to information relating to national security or foreign relations of the United States: Deputy Director; Associate Director; Assistant Director for Economic Science and Technological Affairs; and Assistant Director for National Security and International Affairs; Chief, International Programs Division; and Chief, National Security Programs Division. The Chief, Economic Science and Technology Programs Division is granted authority to assign originally the secret and confidential classifications to such information. The confidential classification may be assigned originally by the deputy chiefs of the above named program divisions, plus such assistant chiefs of those divisions as may be designated in writing by the Director. The classifier of information or material will insure that the information meets the test for that classification. If any substantial doubt exists as to which classification category is appropriate, or as to whether the material should be classified at all, he should designate the less restrictive category.

§ 1301.3 Downgrading and declassification.

Classified information and material will be downgraded or declassified as soon as there are no longer any grounds for continued classification within the classification categories set forth in the order. At the time of origin the classifier will, whenever possible, clearly mark on the information or material a specific date or event upon which downgrading or declassification will occur. Whenever earlier dates or events cannot be determined, the general declassification schedule will apply.

(a) Declassification of classified material after 10 years. All information or material, classified before or after June 1, 1972, and exempted from the general declassification schedule, shall be subject to mandatory classification review at any time after the expiration of 10 years from the date of origin.

(b) Atomic energy material, restricted data, and intelligence and cryptography. Nothing in these regulations will supersede any requirements made by or under the Atomic Energy Act. Restricted data, and material designated formerly restricted data, will be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act and the regulations of the Atomic Energy Commission. Further, nothing in these regulations will prohibit compliance with any special requirements that another department or agency may impose as to classified material or information relating to communications intelligence, cryptography, and related matters originated by the department or agency.

§ 1301.4 Review of classified material for declassification purposes.

(a) *Systematic reviews.* All information and material classified by the Office after June 1, 1972 and evaluated under 44 U.S.C. 2101-2144 as being of sufficient historical or other value to warrant preservation, will be systematically reviewed on a timely basis for the purpose of making such information and material publicly available in accordance with the declassification determination made by the classifying authority. During each year each division and major organizational element within the Director's office will segregate to the maximum extent possible all such information and material warranting preservation and becoming declassified at or prior to the end of such year. Promptly after the end of such year, the records officer will make the declassified information and material available to the public to the extent permitted by law.

(b) *Mandatory review of material over 10 years old.* All classified information and material specified in § 1301.3(a), of this part, will be subject to a classification review provided:

(1) A department or agency of the Government, or a member of the public requests the review;

(2) The request is in writing and describes the classified information or material sufficiently to enable the Office to identify it;

(3) The classified information or material can be obtained with only a reasonable amount of effort.

(i) *Deficient requests.* When the description in a request is deficient the requester should be asked to provide as much additional information as possible. Before denying a request on the grounds that the information or material is not available with a reasonable amount of effort, the requester should be asked to limit his request to information or material that is reasonably obtainable. If the requester then fails to describe the information or material he seeks sufficiently to enable identification, or it cannot be obtained with a reasonable amount of effort, the requester will be notified of the reasons why no action can be taken and of his right to appeal the decision to the Office Review Committee.

(ii) *Procedure.* Requests for classification review under this section should be directed to the Records Officer, Office of Management and Budget, Washington, D.C. 20503. The Records Officer will assign the request to the appropriate office or division within the Office for action, and the latter will immediately acknowledge receipt of the request to the requester in writing. The action office or division will thereafter make a determination within 30 days of receipt of the request or explain to the requester the reasons why further time is necessary. If at the end of 60 days from receipt of the request for review no determination has been made, the requester may apply to the Office Review Committee, Office of Management and Budget, Washington, D.C. 20503, for a determination. If the action office or division determines that continued classification is required, the requester will promptly be notified, and, whenever possible, provided with a brief statement as to why the requested information or material cannot be declassified. The requester may appeal any such determination to the Office Review Committee and the notice of determination will advise him of this right. If, after appeal, the Office Review Committee determines that continued classification is required, it will promptly so notify the requester and advise him that he may appeal the denial to the Interagency Review Committee.

§ 1301.5 Burden of proof for administrative determinations.

In making its determinations concerning requests for declassification of information or material, the burden of proof rests with the originating agency to show that continued classification is warranted under the terms of the order.

§ 1301.6 Availability of declassified material.

Upon a determination under these regulations that the requested material no longer warrants classification, it shall be declassified and made promptly available to the requester, if not otherwise exempt from disclosure under section 552(b) of title 5 U.S.C. (Freedom of Information Act) or other provisions of law.

§ 1301.7 Access by historical researchers.

(a) Persons outside the executive branch engaged in historical research projects may be authorized access to classified information or material provided the Director determines that:

(1) Access is clearly consistent with the interests of national security;

(2) The information or material requested is reasonably accessible and can be located and compiled with a reasonable amount of effort; and

(3) The researcher agrees to adequately safeguard the information and to authorize a review of his notes and manuscript for the sole purpose of determining that no classified information is contained therein.

(b) Requests from historical researchers to Office of Management and Budget for classified information or material will be directed to the Records Officer.

2. 5 C.F.R. Part 1302, Privacy Act Procedures

PART 1302—PRIVACY ACT PROCEDURES

Sec.
1302.1 Rules for determining if an individual is the subject of a record.
1302.2 Requests for access.
1302.3 Access to the accounting of disclosures from records.
1302.4 Requests to amend records.
1302.5 Request for review.
1302.6 Schedule of fees.

AUTHORITY: Pub. L. 93-579, 88 Stat. 1896, 5 USC 552a(f).

SOURCE: 41 FR 38491, Sept. 10, 1976, unless otherwise noted.

§ 1302.1 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by the Office of Management and Budget contains a record pertaining to them should address their inquiries to the Assistant to the Director for Administration, Office of Management and Budget, Washington, D.C. 20503. The written inquiry should contain a specific reference to the system of records maintained by OMB listed in the OMB Notices of Systems of Records or it should describe the type of record in sufficient detail to reasonably identify the system of records. Notice of OMB systems of records subject to the Privacy Act will be made in the FEDERAL REGISTER and copies of the notices will be available upon request to the Assistant to the Director for Administration when so published. A compilation of such notices will also be made and published by the Office of Federal Register, in accordance with section 5 U.S.C. 552a(f).

(b) At a minimum, the request should also contain sufficient information to identify the requester in order to allow OMB to determine if there is a record pertaining to that individual in a particular system of records. In instances when the information is insufficient to insure disclosure to the individual to whom the information pertains, in view of the sensitivity of the information, OMB reserves the right to ask the requester for additional identifying information.

(c) Ordinarily the requester will be informed whether the named system of records contains a record pertaining to the requester within 10 days of receipt of such a request (excluding Saturdays, Sundays, and legal Federal holidays). Such a response will also contain or reference the procedures which must be followed by the individual making the request in order to gain access to the record.

(d) Whenever a response cannot be made within the 10 days, the Assistant to the Director for Administration will inform the requester of the reasons for the delay and the date by which a response may be anticipated.

§ 1302.2 Requests for access.

(a) *Requirement for written requests.* Individuals desiring to gain access to a record pertaining to them in a system of records maintained by OMB must submit their request in writing in accordance with the procedures set forth in paragraph (b) of this section. Due to security measures in effect in both the Old and New Executive Office Buildings, requests made in person (walk-ins) cannot be accepted, except that individuals who are employed by the Office of Management and Budget may make their request on a regularly scheduled workday (Monday through Friday, excluding legal Federal holidays) between the hours of 9:00 a.m. and 5:30 p.m. Such requests for access by individuals employed by OMB need not be made in writing.

(b) *Procedures*—(1) *Content of the Request.* (i) The request for access to a record in a system of records shall be addressed to the Assistant to the Director for Administration, at the address cited above, and shall name the system of records or contain a description (as concise as possible) of such system of records. The request should state that the request is pursuant to the Privacy Act of 1974. In the absence of specifying solely the Privacy Act of 1974 and, if the request may be processed under both the Freedom of Information Act and the Privacy Act and the request specifies both or neither act, the procedures under the Privacy Act of 1974 will be employed. The individual will be advised that the procedures of the Privacy Act will be utilized, of the existence and the general effect of the Freedom of Information Act, and the difference between procedures under the two acts (e.g. fees, time limits, access). The request should contain necessary information to verify the identity of the requester (see § 1302.2(b)(2)(vi), of this part). In addition, the requester should include any other information which may assist in the rapid identification of the record for which access is being requested (e.g., maiden name, dates of employment, etc.) as well as any other identifying information contained in and required by the OMB Notice of Systems of Records.

(ii) If the request for access follows a prior request under § 1302.1, of this part, the same identifying information need not be included in the request for access if a reference is made to that prior correspondence, or a copy of the OMB response to that request is attached.

(iii) If the individual specifically desires a copy of the record, the request should so specify.

(2) *OMB action on request.* A request for access will ordinarily be answered within 10 days, except when the Assistant to the Director for Administration determines that access cannot be afforded in that time, in which case the requester will be informed of the reason for the delay and an estimated date by which the request will be answered. Normally, access will be granted within 30 days from the date the request was received by the Office of Management and Budget. At a minimum, the answer to the request for access shall include the following:

(i) A statement that there is a record as requested or a statement that there is not a record in the system of records maintained by OMB;

(ii) A statement as to whether access will be granted only by providing a copy of the record through the mail; or the address of the location and the date and time at which the record may be examined. In the event the requester is unable to meet the specified date and time, alternative arrangements may be made with the official specified in § 1302.2(b)(1) of this part;

(iii) A statement, when appropriate, that examination in person will be the sole means of granting access only when the Assistant to the Director for Administration has determined that it would not unduly impede the requester's right of access;

(iv) The amount of fees charged, if any (see § 1302.6 of this part) (Fees are applicable only to requests for copies.);

(v) The name, title, and telephone number of the OMB official having operational control over the record; and

(vi) The documentation required by OMB to verify the identity of the requester. At a minimum, OMB's verification standards include the following:

(A) *Current or former OMB employees.* Current or former OMB employees requesting access to a record pertaining to them in a system of records maintained by OMB may, in addition to the other requirements of this section, and at the sole discretion of the official having operational control over the record, have his or her identity verified by visual observation. If the current or former OMB employee cannot be so identified by the official having operational control over the records, identification documentation will be required. Employee identification cards, annuitant identification, driver licenses, or the "employee copy" of any official personnel document in the record are examples of acceptable identification validation.

(B) *Other than current or former OMB employees.* Individuals other than current or former OMB employees requesting access to a record pertaining to them in a system of records maintained by OMB must produce identification documentation of the type described herein, prior to being granted access. The extent of the identification documentation required will depend on the type of record to be accessed. In most cases, identification verification will be accomplished by the presentation of two forms of identification. Any additional requirements are specified in the system notices published pursuant to 5 U.S.C. 552a(e)(4).

(C) *Access granted by mail.* For records to be accessed by mail, the Assistant to the Director for Administration shall, to the extent possible, establish identity by a comparison of signatures in situations where the data in the record is not so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom they pertain. No identification documentation will be required for the disclosure to the requester of information required to be made available to the public by 5 U.S.C. 552. When, in the opinion of the Assistant to the Director for Administration, the granting of access through the mail could reasonably be expected to result in harm or embarrassment if disclosed to a person other than the individual to whom the record pertains, a notarized statement of identity or some similar assurance of identity will be required.

(D) *Unavailability of identification documentation.* If an individual is unable to produce adequate identification documentation the individual will be required to sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a fine of up to $5,000. In addition, depending upon the sensitivity of the records sought to be accessed, the official having operational control over the records may require such further reasonable assurances as may be considered appropriate; e.g., statements of other individuals who can attest to the identity of the requester. No verification of identity will be required of individuals seeking access to records which are otherwise available to any person under 5 U.S.C. 552, Freedom of Information Act.

(E) *Access by the parent of a minor, or legal guardian.* A parent of a minor, upon presenting suitable personal identification, may access on behalf of the minor any record pertaining to the minor maintained by OMB in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, absent a court order or consent, a parent or legal guardian has no absolute right to have access to a record about a child. Minors are not precluded from exercising on their own behalf rights given to them by the Privacy Act.

(F) *Granting access when accompanied by another individual.* When an individual requesting access to his or her record in a system of records maintained by OMB wishes to be accompanied by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record, a signed statement authorizing that person access to the record.

(G) *Denial of access for inadequate identification documentation.* If the official having operation control over the records in a system of records maintained by OMB determines that an individual seeking access has not provided sufficient identification documentation to permit access, the official shall consult with the Assistant to the Director for Administration prior to finally denying the individual access.

(H) *Review of decision to deny access.* Whenever the Assistant to the Director for Administration determines, in accordance with the procedures herein, that access cannot be granted, the response will also include a statement of the procedures to obtain a review of the decision to deny in accordance with § 1302.5 of this part.

(vii) *Exceptions.* Nothing in these regulations shall be construed to entitle an individual the right to access to any information compiled in reasonable anticipation of a civil action or proceedings. The mere fact that records in a system of records are frequently the subject of litigation does not bring those systems of records within the scope of this provision. This provision is not intended to preclude access by an individual to records which are available to that individual under other processes such as the Freedom of Information Act or the rules of civil procedure.

§ 1302.3 Access to the accounting of disclosures from records.

Rules governing the granting of access to the accounting of disclosures are the same as those for granting access to the records (including verification of identity) outlined in § 1302.2, of this part.

§ 1302.4 Requests to amend records.

(a) *Requirement for written requests.* Individuals desiring to amend a record that pertain to them in a system of records maintained by OMB, must submit their request in writing in accordance with the procedures set forth herein unless this requirement is waived by the official having responsibility for the system of records. Records not subject to the Privacy Act of 1974 will not be amended in accordance with these provisions. However, individuals who believe that such records are inaccurate may bring this to the attention of OMB.

(b) *Procedures.* (1) (i) The request to amend a record in a system of records shall be addressed to the Assistant to the Director for Administration. Included in the request shall be the name of the system and a brief description of the record proposed for amendment. In the event the request to amend the record is the result of the individual's having gained access to the record in accordance with the provisions concerning access to records as set forth above, copies of previous correspondence between the requester and OMB will serve in lieu of a separate description of the record.

(ii) When the individual's identity has been previously verified pursuant to § 1302.2(b)(2)(vi) herein, further verification of identity is not required as long as the communication does not suggest that a need for verification is present. If the individual's identity has not been previously verified, OMB may require identification validation as described in § 1302.2(b)(2)(vi). Individuals desiring assistance in the preparation of a request to amend a record should contact the Assistant to the Director for Administration at the address cited above.

(iii) The exact portion of the record the individual seeks to have amended should be clearly indicated. If possible, the proposed alternative language should also be set forth, or at a minimum, the facts which the individual believes are not accurate, relevant, timely, or complete should be set forth with such particularity as to permit OMB not only to understand the individual's basis for the request, but also to make an appropriate amendment to the record.

(iv) The request must also set forth the reasons why the individual believes his record is not accurate, relevant, timely, or complete. In order to avoid the retention by OMB of personal information merely to permit verification of records, the burden of persuading OMB to amend a record will be upon the individual. The individual must furnish sufficient facts to persuade the official in charge of the system of the inaccuracy, irrelevancy, timeliness, or incompleteness of the record.

(v) Incomplete or inaccurate requests will not be rejected categorically. The individual will be asked to clarify the request as needed.

(2) *OMB action on the request.* To the extent possible, a decision upon a request to amend a record will be made within 10 days, excluding Saturdays, Sundays, and legal Federal holidays. The response reflecting the decision upon a request for amendment will include the following:

(i) The decision of the Office of Management and Budget whether to grant in whole, or deny any part of the request to amend the record.

(ii) The reasons for the determination for any portion of the request which is denied.

(iii) The name and address of the official with whom an appeal of the denial may be lodged.

(iv) The name and address of the official designated to assist, as necessary, and upon request of, the individual making the request in the preparation of the appeal.

(v) A description of the review of the appeal within OMB (see § 1302.5 of this part).

(vi) A description of any other procedures which may be required of the individual in order to process the appeal.

If the nature of the request or the system of records precludes a decision within 10 days, the individual making the request will be informed within 10 days of the expected date for a decision. Such a decision will be issued as soon as it is reasonably possible, normally within 30 days from the receipt of the request (excluding Saturdays, Sundays, and legal Federal holidays) unless unusual circumstances preclude completing action within that time. If the expected completion date for the decision indicated cannot be met, the individual will be advised of that delay and of a revised date when the decision may be expected to be completed.

§ 1302.5 Request for review.

(a) Individuals wishing to request a review of the decision by OMB with regard to an initial request to access or amend a record in accordance with the provisions of §§ 1302.2 and 1302.4 of this part, should submit the request for review in writing and, to the extent possible, include the information specified in § 1302.5(b), below. Individuals desiring assistance in the preparation of their request for review should contact the Assistant to the Director for Administration at the address provided herein.

(b) The request for review should contain a brief description of the record involved or in lieu thereof, copies of the correspondence from OMB in which the request to access or to amend was denied and also the reasons why the requester believes that access should be granted or the disputed information amended. The request for review should make reference to the information furnished by the individual in support of his claim and the reasons as required by §§ 1302.2 and 1302.4 of this part set forth by OMB in its decision denying access or amendment. Appeals filed without a complete statement by the requester setting forth the reasons for the review will, of course, be processed. However, in order to make the appellate process as meaningful as possible, the requester's disagreement should be set forth in an understandable manner. In order to avoid the unnecessary retention of personal information, OMB reserves the right to dispose of the material concerning the request to access or amend a record if no request for review in accordance with this section is received by OMB within 180 days of the mailing by OMB of its decision upon an initial request. A request for review received after the 180 day period may, at the discretion of the Assistant to the Director for Administration, be treated as an initial request to access or amend a record.

(c) The request for review should be addressed to the Assistant to the Director for Administration.

(d) Upon receipt of a request for review, the Assistant to the Director for Administration will convene a review group composed of the Assistant to the Director for Administration, the General Counsel, or their designees, and the official having operational control over the record. This group will review the basis for the requested review and will develop a recommended course of action to the Deputy Director. If at any time additional information is required from the requester, the Assistant to the Director for Administration is authorized to acquire it or authorize its acquisition from the requester.

(e) The Office of Management and Budget has established an internal Committee on Freedom of Information and Privacy (hereinafter referred to as the Committee). The Committee is composed of:

(1) Deputy Director;

(2) Assistant to the Director for Administration;

(3) General Counsel;

(4) Assistant Director for Budget Review;

(5) Assistant Director for Legislative Reference;

(6) Assistant to the Director for Public Affairs;

(7) Deputy Associate Director for Information Systems;

(8) Deputy Associate Director for Statistical Policy;

(9) Deputy Associate Director for National Security;

(10) Budget and Management Officer;

(11) Personnel Officer.

(f) The Committee, when directed by the Assistant to the Director for Administration, will review the Office's administration of the Freedom of Information and Privacy Acts and make recommendations for the improvement thereto. In addition, the Committee, upon the request of the Deputy Director, may evaluate a request for review or appeal and recommend a decision to the Deputy Director, who has the final authority regarding appeals.

(g) The Deputy Director will inform the requester in writing of the decision on the request for review within 20 days (excluding Saturdays, Sundays, and legal Federal holidays) from the date of receipt by OMB of the individual's request for review unless the Deputy Director extends the 20 day period for good cause. The extension and the reasons therefor will be sent by OMB to the requester within the initial 20 day period. Such extensions should not be routine and should not normally exceed an additional thirty days. If the decision does not grant in full the request for amendment, the notice of the decision will provide a description of the steps the individual may take to obtain judicial review of such a decision, a statement that the individual may file a concise statement with OMB setting forth the individual's reasons for his disagreement with the decision and the procedures for filing such a statement of disagreement. The Assistant to the Director for Administration has the authority to determine the "conciseness" of the statement, taking into account the scope of the disagreement and the complexity of the issues. Upon the filing of a proper concise statement by the individual, any subsequent disclosure of the information in dispute will be clearly noted so that the fact that the record is disputed is apparent, a copy of the concise statement furnished and a concise statement by OMB setting forth its reasons for not making the requested changes, if OMB chooses to file such a statement. A notation of a dispute is required to be made only if an individual informs the agency of his disagreement with OMB's determination in accordance with § 1302.5 (a), (b) and (c). A copy of the individual's statement, and if it chooses, OMB's statement will be sent to any prior transferee of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c). If the reviewing official determines that the record should be amended in accordance with the individual's request, OMB will promptly correct the record, advise the individual, and inform previous recipients if an accounting of the disclosure was made pursuant to 5 U.S.C. 552(a)(c). The notification of correction pertains to information actually disclosed.

§ 1302.6 Schedule of fees.

(a) *Prohibitions against charging fees.* Individuals will not be charged for:

(1) The search and review of the record,

(2) Any copies of the record produced as a necessary part of the process of making the record available for access, or

(3) Any copies of the requested record when it has been determined that access can only be accomplished by providing a copy of the record through the mail.

(b) *Waiver.* The Assistant to the Director for Administration may at no charge, provide copies of a record if it is determined the production of the copies is in the interest of the Government.

(c) *Fee schedule and method of payment.* Fees will be charged as provided below except as provided in paragraphs (a) and (b) of this section.

(1) *Duplication of records.* Records will be duplicated at a rate of $.10 per page for all copying of 4 pages or more. There is not charge for duplication 3 or fewer pages.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than $25.00, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25.00, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requester to consult with Office personnel in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of the requester.

(3) Fees should be paid in full prior to issuance of requested copies. In the event the requester is in arrears for previous requests copies will not be provided for any subsequent request until the arrears have been paid in full.

(4) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Assistant to the Director for Administration, Office of Management and Budget, Washington, D.C. 20503.

(5) A receipt for fees paid will be given upon request.

3. 5 C.F.R. 1303, Freedom of Information Act Procedures

PART 1303—PUBLIC INFORMATION PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT

ORGANIZATION

Sec.
1303.1 General.
1303.2 Authority and functions.
1303.3 Organization.

PROCEDURES

1303.10 Methods.

AVAILABILITY OF INFORMATION

1303.20 Inspection, copying and exceptions.

CHARGES FOR SEARCH AND REPRODUCTION

1303.30 Schedule of fees and method of payment for services rendered.

AUTHORITY: 5 U.S.C. 552, as amended by Public Law 93-502.

SOURCE: 47 FR 33483, Aug. 3, 1982, unless otherwise noted.

ORGANIZATION

§ 1303.1 General

This information is furnished for the guidance of the public and in compliance with the requirements of section 552 of title 5, United States Code, as amended.

§ 1303.2 Authority and functions.

(a) The Office of Management and Budget was established in the Executive Office of the President pursuant to Part I of Reorganization Plan No. 2 of 1970 (35 FR 7959), effective July 1, 1970. That plan transferred to the President all functions vested by law in the Bureau of the Budget, or its Director, and designated the Bureau of the Budget as the Office of Management and Budget. By Executive Order No. 11541 of July 1, 1970 (35 FR 10737), the President delegated all functions transferred to him by Part I of the Plan to the Director of the Office of Management and Budget.

(b) The principal statutory functions of the Office of Management and Budget are contained in the Budget and Accounting Act of 1921 (42 Stat. 20, 31 U.S.C. 1-25); the Government Corporation Control Act (59 Stat. 597, 31 U.S.C. 841-869); the Budget and Accounting Procedures Act of 1950 (65 Stat. 832), the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344), the Office of Federal Procurement Policy Act (Public Law 93-400), the Privacy Act of 1974 (Pub. L. 93-579), and the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

(c) The functions of the Office of Management and Budget are carried out pursuant to the provisions of the statutes cited above and the provisions of various Executive orders—principally, Executive Order No. 8248 of September 8, 1939 (CFR Cum. Supp., p. 576), outlining certain functions to be performed by the Bureau of the Budget for the President, and Executive Order No. 11239 of June 28, 1965 (3 CFR Supp., p. 146), as amended, delegating certain functions of the President to the Director of the Bureau of the Budget, and, Executive Order No. 12991 on Federal Regulation. Under the terms of Executive Order No. 11541 of July 1, 1970, the assignments and delegations made in the earlier orders are to be considered as assignments to the Office of Management and Budget and its Director.

§ 1303.3 Organization.

The central organization of the Office of Management and Budget consists of:

(a) The Office of the Director, which includes the Director and the Deputy Director and their principal assistants, including the Deputy Assistant Director for Administration.

(b) The Administrator of the Office of Federal Procurement Policy.

(c) The Administrator of the Office of Information and Regulatory Affairs.

(d) Two Associate and Assistant Directors with Government-wide management responsibilities in specialized areas as follows:

(1) Legislative Reference.

(2) Management.

(e) Five program and budget Associate and Assistant Directors, as follows:

(1) Budget Review.

(2) National Security and International Affairs.

(3) Human Resources, Veterans, and Labor.

(4) Economics and Government.

(5) Natural Resources, Energy, and Science.

(f) The Office has no field organization.

(g) Units of the Office of Management and Budget are presently located in the Old Executive Office Building, 17th Street and Pennsylvania Avenue, N.W., and in the New Executive Office Building, 17th and H Streets, N.W., Washington, D.C. 20503. Regular office hours are from 9 a.m. to 5:30 p.m., Monday through Friday. Both buildings are under security control. Persons desiring to visit offices or employees of the Office of Management and Budget in either building will usually find it easier to do so if they write or telephone in advance for an appointment.

PROCEDURES

§ 1303.10 Methods of operation.

(a) The Office of Management and Budget maintains current indexes which identify information pertaining to matters issued, adopted, or promulgated after July 4, 1967, that are within the scope of 5 U.S.C. 552(a)(2). These indexes are updated quarterly and are published in the FEDERAL REGISTER. They are also available for public inspection and copying at the Office's Publication Office, Room G-236, New Executive Office Building, 17th and H Streets, N.W., Washington, D.C. 20503. The indexes may be examined between the hours of 9:00 a.m. and 5:30 p.m. on any day, except Saturdays, Sundays, and legal public holidays.

(b) The Deputy Assistant Director for Administration is responsible for acting on all initial requests. Individuals wishing to obtain any information listed on the indexes should address their request in writing to the Deputy Assistant Director for Administration, Office of Management and Budget, Washington, D.C. 20503, Phone 395-7250. Requests for information shall be as specific as possible.

(c) Upon receipt of any request for information or records, the Deputy Assistant Director for Administration will determine within 10 days (excepting Saturdays, Sundays and legal public holidays) whether it is appropriate to grant the request and will immediately provide written notification to the person making the request. If the request is denied, the written notification to the person making the request shall include the names of the individuals who participated in the determination and a notice that an appeal may be lodged including the format and content of any such appeal within the Office of Management and Budget. (Receipt of a request as used herein means the date the request is received in the office of the Deputy Assistant Director for Administration.)

(d) Appeals shall be set forth in writing and addressed to the Deputy Assistant Director for Administration at the address specified in paragraph (b) of this section. The appeal shall include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the Deputy Director, or his designee, within 20 days (excepting Saturdays, Sundays, and legal public holidays). If, on appeal, the denial is in whole or in part upheld, the written determination will also contain a notification of the provisions for judicial review and the names of the persons who participated in the determination.

(e) In unusual circumstances, the time limits prescribed in paragraphs (c) and (d) of this section may be extended for not more than 10 working days (excepting Saturdays, Sundays, or legal public holidays). Extensions may be granted by the Deputy Assistant Director for Administration. The extension period may be split between the initial request and the appeal but in no instance may the total period exceed 10 working days. Extensions will be by written notice to the persons making the request and will set forth the reasons for the extension and the date the determination is expected. As used herein, but only to the extent reasonably necessary to the proper processing of the particular request, the term "unusual circumstances" means:

(1) The need to search for and collect the requested records from establishments that are separated from the office processing the request;

(2) The need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practical speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency which have a substantial subject matter interest therein.

AVAILABILITY OF INFORMATION

§ 1303.20 Inspection, copying, and exceptions.

(a) When a request for information has been approved pursuant to § 1303.10 above, the person making the request may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the Deputy Assistant Director for Administration at the address or telephone number listed in § 1303.10(c). Such materials may be copied manually without charge, and reasonable facilities will be made available for that purpose. Also, copies of individual pages of such materials will be made available at the price per page specified in § 1303.30(a); however, the right is reserved to limit to a reasonable quantity the copies of such materials which may be made available in this manner when copies also are offered for sale by the Superintendent of Documents.

(b) Certain functional units of the Office of Management and Budget solely advise and assist the President, and therefore these units are not covered by 5 U.S.C. 552. However, the Director or the Deputy Director, acting on his behalf, may determine that a record which falls in one of the following categories shall be made available. These units carry out activities that provide advice and assistance to the President with regard to:

(1) The formulation and preparation of the Federal Budget.

(2) The processing and enrolled bills and determinations of the relationships of pending and proposed legislation to the program of the President.

(3) The compensation of Federal employees.

(4) The establishment and organization of new agencies and the reorganization of existing programs and agencies, and

(5) The preparation of Executive Orders and Proclamations.

(c) Except to the extent that the Director or Deputy Director, acting on his behalf, determines that a record which falls within one of the following categories shall be made available, this section shall not apply to matters that are:

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy, and (ii) are in fact properly classified pursuant to such Executive Order.

(2) Related solely to the internal personnel rules and practices of the Office.

(3) Specifically exempted from disclosure by statute, provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issues, or (ii) establishes particular criteria for withholding or refers to particular types of matter to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Interagency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Office.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

CHARGES FOR SEARCH AND REPRODUCTION

§ 1303.30 Schedule of fees and method of payment for services.

(a) Following is the fees schedule for the search and reproduction of information available under the Freedom of Information Act (5 U.S.C. 552), as amended.

(1) Search for records—Number of professional and/or clerical staff hours times the searcher's hourly wage.

(2) Duplication of records—Records will be duplicated at a rate of $.10 per page.

(3) Other—When no specific fee has been established for a service, or the request for a service does not fall under one of the above categories due to the amount or type thereof, the Deputy Assistant Director for Administration is authorized to establish an appropriate fee based on "direct costs" as provided in the Freedom of Information Act and in accordance with Office of Management and Budget Circular No. A-25, "User charges." Examples of services covered by this provision include searches involving computer time or special travel, transportation, or communications costs.

(b) If records requested under this part are stored elsewhere other than the headquarters of the Office of Management and Budget at Washington, D.C., the special costs of returning such records to the headquarters for review will be added to the search costs.

(c) Ordinarily, fees shall not be charged if the records requested are not found, or if all of the records located are withheld as exempt. However, if the time expended in processing the request is substantial, and if the requester has been notified of the estimated cost pursuant to paragraph (d) of this section and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees may be charged.

(d) Where it is anticipated that the fees chargeable under this section will amount to more than $50.00, or the maximum amount specified in the request, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $50.00, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requester to consult with office personnel in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of the requester. A request will not be deemed to have been received until the requester is notified of the anticipated cost and agrees to bear it.

(e) Fees must be paid in full prior to issuance of requested copies. In the event the requester is in arrears for previous requests for which the Office was unable to find or provide the requested information (see paragraph (b) of this section), copies of records will not be provided for any subsequent request until the arrears have been paid in full.

(f) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Deputy Assistant Director for Administration, Office of Management and Budget, Washington, D.C. 20503.

(g) A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

(h) The Deputy Assistant Director for Administration, or an officer designated by the Deputy Assistant Director for Administration may in accordance with the Freedom of Information Act, as amended, waive or reduce all or part of any fee provided for in this section when the Deputy Assistant Director for Administration or the designated officer deems it to be in either (a) the Office's interest or (b) in the public interest because furnishing the information can be considered as primarily benefiting the general public.

4. 5 C.F.R. 1312, Classification, Down-grading, Declassification and Safeguarding of National Security Information

PART 1312—CLASSIFICATION, DOWN- GRADING, DECLASSIFICATION AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION

Subpart A—National Security Information—Classification and Declassification

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AUTHORITY: E.O. 12065, 43 FR 28949, 3 CFR, 1978 Comp., P. 190 as implemented by Information Security Oversight Office Directive, 43 FR 46280, October 5, 1978.

SOURCE: 44 FR 64783, Nov. 5, 1979, unless otherwise noted.

Subpart A—National Security Information—Classification and Declassification

§ 1212.1 Purpose and authority.

This part prescribes the procedures for the classification and declassification of national security information in the possession of the Office of Management and Budget (OMB). It is issued under authority of Executive Order 12065 (43 FR 28949, June 28, 1978) as implemented by Information Security Oversight Office Directive (43 FR 46280, October 5, 1978) and is applicable to all OMB employees.

§ 1312.2 Responsibilities.

The effectiveness of the classification and declassification program in OMB depends entirely on the amount of attention paid to it by supervisors and their staffs in those offices that possess or produce classified material. Officials who *originate* classified material are responsible for the proper assignment of a classification to that material and for a decision as to its declassification or downgrading. Officials who produce documents containing classified information must determine the *source of the classification* for that information and must insure that proper identity of that source is shown on the document. Custodians of classified material are responsible for its safekeeping and for insuring that such material is adequately marked as to current classification.

(a) *Security Officer.* Under the general direction of the Assistant to the Director for Administration, the Security Officer will supervise the administration of this section and will develop programs to assist in compliance with the Order. Specifically, he will: (1) Promote the correct understanding of this part by all employees and conduct initial briefings about security procedures and policies for new employees; (2) issue and keep current such classification guides and guidelines for review for declassification as are required by the Order; (3) conduct periodic reviews of classified documents produced and of areas where classified materials are stored, and provide assistance and guidance where necessary, and, (4) maintain a current listing of all officials who have been designated in writing to have Top Secret, Secret and Confidential original classification authority.

(b) *Heads of offices and division.* The head of each division or major organizational unit is responsible for the administration of the part within his or her area. Appropriate internal guidance should be issued to cover special or unusual conditions within an office.

§ 1312.3 Classification requirements.

U.S. Citizens must be kept informed about the activities of the Government. However, in the interest of our national security, certain official information must be subject to constraints on its dissemination or release. This information is classified in order to provide this protection. Information may not be considered for classification unless it concerns (a) military plans, weapons or operation, (b) foreign government information, (c) intelligence activities, sources, or methods, (d) foreign relations or foreign activities of the United States, (e) scientific, technological, or economic matters relating to the national security, (f) United States Government programs for safeguarding nuclear material or facilities, or, (g) other categories of information which are related to national security and which require protection against unauthorized disclosure as determined by the President, by a person designated by the President, or by an agency head. Even though information is determined to meet one or more of the criteria above, it may not be considered for classification unless an original classification authority determines that its unauthorized disclosure reasonably could be expected to cause at least identifiable damage to the national security.

§ 1312.4 Classification designations.

Except as provided in the Atomic Energy Act of 1954, the Order provides the only basis for classifying information. Information which meets the test for classification may be classified only in one of the following three designations. If there is reasonable doubt which designation is appropriate, or whether the information should be classified at all, the less restrictive designation should be used or the information should not be classified.

(a) TOP SECRET. This classification shall be applied only to information the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security.

(b) SECRET. This classification shall be applied only to information the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security, and,

(c) CONFIDENTIAL. This classification shall be applied only to information the unauthorized disclosure of which could reasonably be expected to cause identifiable damage to the national security.

§ 1312.5 Authority to classify.

The authority to *originally* classify information or material under these regulations shall be limited to those officials concerned with matters of national security. The officials listed below are granted authority by the Director, OMB, to assign original classifications as indicated to information or material that is originated by OMB staff, and relating to the national security of the United States:

(a) Top Secret and below:

(1) Deputy Director

(2) Executive Associate Director for Budget (EAD/B)

(3) Associate Director for National Security and International Affairs (AD/NSIA)

(4) Associate Director for Natural Resources, Energy and Science (AD/NRES)

(5) Deputy Associate Director for National Security (DAD/NS)

(b) Secret and below:

(1) Executive Associate Director for Reorganization. Management (EAD/RM)

(2) Deputy Associate Director for International Affairs (DAD/IA)

(3) Deputy Associate Director for Special Studies, National Security and International Affairs (DAD/SS/NSIA)

(4) Deputy Associate Director for Energy and Science (DAD/ES)

(5) Deputy Associate Director for Special Studies, Natural Resources, Energy and Science (DAD/SS/NRES)

(c) Confidential.

(1) Assistant Deputy Associate Director for National Security

(2) Assistant Deputy Associate Director for International Affairs.

(d) Classification authority is not delegated to those persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or by a classification guide.

§ 1312.6 Duration of classification.

Except for information qualifying for extended classification under OMB classification guides, each OMB original classification authority shall, at the time a document is classified, set a date or event for declassification no more than six years later. This date or event shall be shown on the face of the document. Only officials with original top secret classification authority may classify information for more than six years from the date of original classification. When material is thus extended beyond six years, the reason for the extension, and a date or event for declassification (or review for declassification) shall appear on the face of the document. This date or event shall be as early as national security permits, but shall be not more than 20 years from the date of original classification, except that foreign government information may be protected up to 30 years from date of original classification as provided in section 1-402 of the Order.

§ 1312.7 Derivative classification.

A "derivative classification" means that the information is in substance, the same information that is currently classified, usually by another agency or classification authority. The application of derivative classification markings is the responsibility of the person who incorporates, restates, paraphrases, or generate in new form information that is already classified, or who applies such markings in accordance with instructions from an authorized classifier or classification guide. So far as it is practicable, persons applying derivative classifications will, through checks with originators or other appropriate inquiries, determine whether such incorporation, paraphrasing, or restating, has removed the basis for classification, in which case the document may be assigned a lower classification or may be issued in unclassified form.

§ 1312.8 Standard identification and markings.

At the time classified material is produced, the following markings will be made as indicated:

(a) The office of origin and the date of the document will be placed on the cover or first page.

(b) The overall classification of the document will be stamped, marked, or permanently affixed at the top and bottom of the cover or first page.

(c) The overall classification of individual pages will be marked or stamped at the top and bottom of each page containing classified information.

(d) The classification of individual portions of the document, using the abbreviation, (TS), (S), (C), or (U), will be typed or marked at the end of each paragraph or section of the document.

(e) The identity of the original classifier of the information, unless also the signer of the document, will be shown on the "classified by" line. (See paragraph (h) of this section, for marking derivatively classified information.)

(f) The date or event for declassification or for review for declassification will be indicated on the line intended for that purpose.

(g) Downgrading markings, if applicable, will be placed immediately below the date or event for review for declassification line.

(h) If the document is derivatively classified, enter the identity of the original classifier on the "classified by" line, and continue the original classifier's guidance as to declassification. When the classification is derived from more than one source, the term "multiple sources" may be used, and the most distant date for review or declassification will be shown. These sources will be identified on the last page of the document, if feasible, but will always be listed on the official file copy of the document.

(i) Transmittal documents will be stamped to indicate the highest classification of the information transmitted, and the classification of the transmittal document standing alone.

(j) The classification data for material other than documents will be affixed by tagging, stamping, recording, or other means, to insure that recipients are aware of the requirement for the protection of the information.

(k) Additional markings required:

(1) Restricted Data, or Formerly Restricted Data, will be identified by such markings as may be prescribed by the Department of Energy.

(2) Documents revealing intelligence sources or methods will be identified by the notation, "Warning Notice—Intelligence Sources and Methods Involved."

(3) Limitations on dissemination and/or reproduction, as determined by the originator, will be noted in the text of the document, or on its cover sheet.

§ 1312.9 Downgrading and declassification.

Classified information originated by OMB offices will be downgraded or declassified as soon as it no longer qualifies for continued protection under the provisions of the Order. Authority to downgrade or declassify OMB-originated information is granted to those authorized to classify, (see § 1312.5). Additionally, the Assistant to the Director for Administration and the Security Officer are authorized to exercise downgrading and declassification actions up to and including the Top Secret level.

(a) *Transferred material.* Information which was originated by an agency that no longer exists, or that was received by OMB in conjunction with a transfer of functions, is deemed to be OMB-originated material. Information which has been transferred to another agency for storage purposes remains the responsibility of OMB.

(b) *Periodic review of classified material.* Each office possessing classified information will review that material on an annual basis, or in conjunction with the transfer of files to non-current record storage, and take action to downgrade or declassify all material no longer qualifying for continued protection at that level. All material transferred to non-current record storage must be properly marked with correct downgrading or declassification instructions.

§ 1312.10 Systematic review guidelines.

The Security Officer will prepare and keep current such guidelines as are required by the Order for the downgrading and declassification of OMB originated material that is 20 years old or older.

§ 1312.11 Challenges to classifications.

OMB employees are encouraged to familiarize themselves with the provisions of the Order and with this part. Employees are also encouraged to question or to challenge those classifications they believe to be improper, unnecessary, or for an inappropriate time. Such questions or challenges will normally be addressed to the originator of the information, unless the challenger desires to remain anonymous, in which case the challenge should be addressed to the Security Program Review Committee.

§ 1312.12 Security Program Review Committee.

The Assistant to the Director for Administration will chair the OMB Security Program Review Committee, which will act on suggestions and complaints about the OMB security program. This committee will also respond to challenges to classifications (see § 1312.11) when direct negotiations with the originator were not desired, or were unsatisfactory or nonproductive. Responses to such appeals will be made within 30 days of receipt.

Subpart B—Control and Accountability of Classified Information

§ 1312.21 Purpose.

This part prescribes procedures for the receipt, accountability, transmission, and access to classified information within the Office of Management and Budget.

§ 1312.22 Responsibilities.

The effective direction by supervisors and the alert performance of duty by employees will do much to assure the adequate security of classified information in the possession of OMB offices. Each employee has a responsibility to protect and account for all classified information that he or she knows of within his or her area of responsibility. Such information will be made available only to those who have official need to know, and who have been granted the appropriate security clearance by competent authority. Particular care must be taken not to discuss classified information over unprotected communications circuits (to include intercom or closed-circuit TV), at non-official functions, or at any time that it might be revealed to unauthorized persons. Classified information will not be entered into any computer system available to OMB offices.

§ 1312.23 Responsibilities.

(a) The Security Officer will supervise the administration of this part, to include:

(1) Promoting a correct understanding of this Section and conducting initial briefings about security procedures for all new employees.

(2) Providing for periodic inspections of office areas and reviews of produced documents to assure full compliance with OMB regulations and procedures.

(3) Taking prompt action to investigate alleged violations of security, and recommending appropriate administrative actions with respect to violators.

(4) Supervising the annual inventories of Top Secret material.

(5) Insuring that containers used to store classified information meet approved security standards and that combinations to security containers are changed as required.

(b) Head of offices or division within OMB are responsible for the administration of this part within their areas, including the maintenance of the prescribed control and accountability records for classified information and the establishment of internal procedures to insure that classified material is properly safeguarded at all times.

§ 1312.24 Access to classified information.

Classified information may be made available to a person only when the possessor of the information establishes that access is essential to the accomplishment of official government duties, and that the proposed recipient possesses a security clearance granted by competent authority.

§ 1312.25 Access by historical researchers and former Presidential appointees.

The procedure of classification requirements may be waived for persons who are engaged in historical research projects, or who previously have occupied policy-making positions to which they were appointed by the President. In these instances, the Security Officer will make a determination as to the trustworthiness of the requestor, and will obtain written agreement from the requestor to safeguard the information to which access is given. He will also obtain written consent to the review by OMB of notes and manuscripts for the purpose of determining that no classified information is contained therein. Upon the completion of these steps, the material to be researched will be reviewed by the division of primary interest to insure that access is granted only to material over which OMB has classification jurisdiction. Former Presidential appointees will be granted access only to that information that he or she originated, reviewed, signed, or received while serving as a Presidential appointee.

Subpart C—Mandatory Declassification Review

§ 1312.31 General.

Other government agencies and individual members of the public frequently request that classified information in OMB files be reviewed for possible declassification and release. This part prescribes the procedures for such review and subsequent release or denial.

§ 1312.32 Responsibility.

All requests for the mandatory review of classified information in OMB files should be addressed to the Assistant to the Director for Administration, Office of Management and Budget, Washington, DC 20503, who will acknowledge receipt of the request. When the request does not reasonably describe the information sought, the requestor will be notified that unless additional information is provided, or the scope of the request is narrowed, no further action will be taken.

§ 1312.33 Information in the custody of OMB.

Information contained in OMB files and under the exclusive declassification jurisdiction of OMB will be reviewed by the Assistant to the Director for Administration and/or the office of primary interest in the information, to determine whether, under the declassification provisions of Section 3-3 of the Order, the requested information may be declassified. If so, the information will be made available to the requestor unless withholding is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requestor shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination to the Director, Office of Management and Budget, and a notice that such an appeal must be filed within 60 days in order to be considered.

§ 1312.34 Information classified by another agency.

When a request is received for information that was classified by another agency, the Assistant to the Director for Administration will forward the request, along with any other related materials, to the appropriate agency for review and determination as to release. Recommendations as to release or denial may be made, if appropriate. The requestor will be notified of the referral, unless the receiving agency objects on the grounds that its association with the information requires protection.

§ 1312.35 Appeal procedure.

Appeals received as a result of a denial will be routed to the Deputy Director, who will take action as necessary to determine whether any part of the information may be declassified and if so, notify the requestor of his determination and make available that information that is declassified and otherwide releasable. If continued classification in whole is required, the requestor shall be notified by the Director of the reasons therefor.

§ 1312.36 Fees.

There will normally be no fees charged for the mandatory review of classified material for declassification under this part.

5. 5 C.F.R. 1320, Paperwork Reduction Act Policies and Procedures

PART 1320—CONTROLLING PAPERWORK BURDENS ON THE PUBLIC

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APPENDIX A—AGENCIES WITH DELEGATED REVIEW AND APPROVAL AUTHORITY

AUTHORITY: 31 U.S.C. Sec. 18a and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35.

SOURCE: 48 FR 13689, Mar. 31, 1983, unless otherwise noted.

§ 1320.1 Purpose.

The purpose of this Part is to implement the provisions of the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35) (the Act) concerning collections of information. It is issued under the authority of Section 3516 of the Act, which provides that "The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this Chapter." It is designed to minimize and control burdens associated with the collection of information by Federal agencies from individuals, businesses and other private institutions, and State and local governments. In the case of inter-agency reporting, this Part establishes policy and promulgates regulations to ensure the effective management of inter-agency reporting requirements in the executive branch, and is promulgated under the authority of the Federal Records Act (Title 44 U.S.C. Chapters 21, 25, 27, 29, 31) and Section 104 of the Budget and Accounting Procedures Act of 1950, (Title 31 U.S.C Section 1111, as well as the Act.

§ 1320.2 Effect.

This Part supersedes and rescinds Circular No. A-40, Revised, dated May 3, 1973, and Transmittal Memorandum No. 1, dated February 10, 1976. This Part will become effective on May 2, 1983.

§ 1320.3 Coverage.

The requirements of this Part apply to all agencies as defined in § 1320.7(a) and to all collections of information conducted or sponsored by those agencies, as defined in § 1320.7(c), wherever conducted or sponsored, except for collections of information:

(a) By compulsory process pursuant to the Anti-trust Civil Process Act or Section 13 of the Federal Trade Commission Improvements Act or Section 13 of the Federal Trade Commission Improvements Act of 1980;

(b) During the conduct of intelligence activities, as defined in Section 4-206 of Executive Order 12036, issued January 24, 1978, or successor orders, including Executive Order 12333, issued December 4, 1981, or during the conduct of cryptologic activities that are communications securities activities; or

(c) During the conduct of a federal criminal investigation or prosecution, during the disposition of a particular criminal matter, during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action or investigation involving an agency against specific individuals or entities. This exception applies during the entire course of the investigation or action, whether before or after formal charges or complaints are filed or formal administrative action is initiated, but only after a case file or its equivalent is opened with respect to a particular party. General collections of information prepared or undertaken with reference to a category of individuals or entities, such as a class of licensees or an industry, do not fall within this exception.

§ 1320.4 General requirements.

(a) An agency shall not engage in a collection of information without obtaining Office of Management and Budget (OMB) approval of the collection of information and displaying a currently valid OMB control number and, unless OMB determines it to be inappropriate, an expiration date. An agency shall not continue to engage in such collection of information after the expiration date of the control number, unless OMB has approved an extension. Each agency shall ensure that collections of information required by law or necessary to obtain a benefit, and which are submitted to nine or fewer persons, inform potential respondents that the collection of information is not subject to OMB review under the Act.

(b) To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that:

(1) The collection of information is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;

(2) The collection of information is not duplicative of information otherwise accessible to the agency; and

(3) The collection of information has practical utility. The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do so by means of shifting disproportionate costs or burdens onto the public. It shall also comply with the general information collection guidelines set out in § 1320.6, where applicable.

(c) OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria listed in § 1320.4(b), and will consider whether the burden of the collection of information is justified by its practical utility. In addition:

(1) OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the agency exercises discretion in its implementation; and

(2) OMB will consider necessary any information collection request specifically required by an agency rule approved or not acted upon by OMB pursuant to §§ 1320.13 or 1320.14, but will independently assess any such information collection request to the extent that it deviates from the specifications of the rule.

(d) Except as provided in § 1320.19, to the extent that OMB determines that all or any portion of a collection of information by an agency is unnecessary, for any reason, the agency shall not engage in such collection or portion thereof.

§ 1320.5 Public Protection.

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failure to comply with any information collection request if the request does not display a currently valid OMB control number, or, in the case of an information collection request which is submitted to nine or fewer persons, the request fails to state that for this reason it is not subject to OMB review under the Act.

(b) Notwithstanding any other provision of law, no person shall be subject to any penalty for failure to comply with any collection of information requirement if the requirement has been disapproved by OMB, unless that disapproval has been overridden by an independent regulatory agency pursuant to § 1320.19. After March 1, 1984, all collection of information requirements that have been submitted to OMB for clearance, and that have not been disapproved by OMB, will display a currently valid OMB control number. The absence of a control number on a collection of information requirement does not, as a legal matter, invalidate such requirement; however, its absence will alert the public that either the agency has failed to comply with applicable legal requirements for the collection of information or the collection of information requirement has been disapproved.

(c) Whenever an agency has imposed an information collection request or collection of information requirement as the means for proving or satisfying a condition to the receipt of a benefit or the avoidance of a penalty, and the information collection request does not display a currently valid OMB control number or statement, as prescribed in § 1320.4(a), or the collection of information requirement has been disapproved by OMB in accordance with the procedures established by this Part (and not overridden by an independent regulatory agency pursuant to § 1320.19), the agency shall not treat a person's failure to comply, in and of itself, as grounds for withholding the benefit or imposing the penalty. The agency shall instead permit respondents to prove or satisfy the legal conditions in any other reasonable manner.

(1) If such a collection of information is disapproved in whole by OMB (and the disapproval is not overridden pursuant to § 1320.19), the agency shall grant the benefit to (or not impose the penalty on) otherwise qualified persons without requesting further proof concerning the condition.

(2) If such a collection of information is ordered modified by OMB (and the order is not overridden pursuant to § 1320.19), the agency shall permit respondents to prove or satisfy the condition by complying with the collection of information as so modified.

(d) Whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, such penalty may not be imposed by an agency directly, by an agency through judicial process, or by any other person through judicial or administrative process.

§ 1320.6 General information collection guidelines.

Unless the agency is able to demonstrate that such collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information:

(a) Requiring respondents to report information to the agency more often than quarterly;

(b) Requiring respondents to prepare a written response to an information collection request or requirement in fewer than 30 days after receipt of it;

(c) Requiring respondents to submit more than an original and two copies of any document;

(d) Requiring grantees to submit or maintain information other than that required under OMB Circular A-102 or A-110;

(e) Providing for remuneration of respondents, other than contractors or grantees;

(f) Requiring respondents to retain records, other than health, medical, or tax records, for more than three years;

(g) In connection with a statistical survey that is not designed to produce results that can be generalized to the universe of study;

(h) Unless the agency has taken all practicable steps to develop separate and simplified requirements for small businesses and other small entities;

(i) Requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect its confidentiality to the extent permitted by law;

(j) Requiring respondents to maintain or provide information in a format other than that in which the information is customarily maintained.

§ 1320.7 Definitions.

For purposes of implementing the Paperwork Reduction Act and this Part, the following terms are defined as follows:

(a) "Agency" means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government, or any independent regulatory agency, but does not include the General Accounting Office, Federal Election Commission, and governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions, or government-owned contractor-operated facilities including laboratories engaged in national defense research and production activities.

(b) "Burden" means the total time, effort, or financial resources required to respond to a collection of information, including that to read or hear instructions; to develop, modify, construct, or assemble any materials or equipment; to conduct tests, inspections, polls, observations, or the like necessary to obtain the information; to organize the information into the requested format; to review its accuracy and the appropriateness of its manner of presentation; and to maintain, disclose, or report the information.

(1) The time and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records), will be excluded from the "burden" if the agency demonstrates that the reporting or recordkeeping activities needed to comply are usual and customary.

(2) A collection of information sponsored by a federal agency that is also sponsored by a unit of state or local government is presumed to impose a federal burden except to the extent the agency shows that such state or local requirement would be imposed even in the absence of a federal requirement.

(c) "Collection of information" means the obtaining or soliciting of information by an agency from ten or more persons by means of identical questions, whether such collection of information is mandatory, voluntary, or required to obtain a benefit. For purposes of this definition, the "obtaining or soliciting of information" includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. "Collections of information" are of two mutually exclusive types: "collection of information requirements" and "information collection requests."

(1) A "collection of information" includes the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or other similar methods. Similar methods may include contracts, agreements, policy statements, plans, rules or regulations, planning requirements, circulars, directives, instructions, bulletins, requests for proposal or other procurement requirements, interview guides, disclosure requirements, labeling requirements, telegraphic or telephonic requests, and standard questionnaires used to monitor compliance with agency requirements.

(2) Requirements by an agency or a person to obtain or compile information for the purpose of disclosure to members of the public or to the public at large, through posting, notification, labeling, or similar disclosure requirements, constitute the "collection of information" whenever the same requirement to obtain or compile information would be a "collection of information" if the information were directly provided to the agency. The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within this definition.

(3) A "collection of information" also includes questions posed to agencies, instrumentalities, or employees of the United States, if the results are to be used for general statistical purposes.

(d) "Collection of information requirement" is the term used for the collection of information by means of agency rule adopted after public notice and comment. The term comprises any form or other written instrument for the collection of information that is published as a part of the rule.

(e) "Director" means the Director of OMB or his designee.

(f) "Display" means:

(1) In the case of forms, questionnaires, instructions, and other written information collection requests individually distributed to potential respondents, to print the OMB control number (and, unless OMB determines it to be inappropriate, the expiration date) in the upper right hand corner of the front page of the request;

(2) In the case of collections of information published in regulations, guidelines, and other issuances in the FEDERAL REGISTER to publish the OMB control number in the FEDERAL REGISTER (as part of the regulatory text or as a technical amendment) and ensure that it will be included in the Code of Federal Regulations if the issuance is also included therein;

(3) In other cases, and where OMB determines that special circumstances

exist, to use other means to inform potential respondents of the OMB control number (and, unless OMB determines it to be inappropriate, the expiration date).

(g) An "Education agency or institution" means any public or private agency or institution with the primary function of education.

(h) "A Federal education program" means any federal activity with a primary purpose of offering instruction or affecting an educational agency's or institution's ability to offer instruction.

(i) "Independent regulatory agency" means the Board of Governors of the Federal Reserve System, the Civil Aeronautics Board, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Home Loan Bank Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, National Credit Union Administration, and any other similar agency designated by statute as a Federal independent regulatory agency or commission.

(j) "General purpose statistics" are those collected chiefly for public and general government uses, without primary reference to policy or program operations of the agency collecting the information.

(k) "Information" means any statement of fact or opinion, whether in numerical, graphic, or narrative form, and whether oral or maintained on paper, magnetic tapes, or other media. "Information" does not generally include items in the following categories; however, OMB may determine that any specific item constitutes "information":

(1) Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments, provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument;

(2) Samples of products or of any other physical objects;

(3) Facts or opinions obtained through direct observation by an employee or agent of the sponsoring agency or through nonstandardized oral communication in connection with such direct observations;

(4) Facts or opinions submitted in response to general solicitations of comments from the public, published in the FEDERAL REGISTER or other publications, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition to the agency's full consideration of the comment;

(5) Facts or opinions obtained initially or in follow-on requests, from individuals (including individuals in control groups) under treatment or clinical examination in connection with research on or prophylaxis to prevent a clinical disorder, direct treatment of that disorder, or the interpretation of biological analyses of body fluids, tissues, or other specimens, or the identification or classification of such specimens;

(6) A request for facts or opinions addressed to a single person;

(7) Examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examinations;

(8) Facts or opinions obtained or solicited at or in connection with public hearings or meetings;

(9) Facts or opinions obtained or solicited through nonstandardized follow-up questions designed to clarify responses to approved collections of information;

(10) Like items so designated by the Director.

(l) "Information collection request" means the method by which an agency communicates the specifications for a collection of information to potential respondents, including a written report form, application form, schedule, questionnaire, oral communication, reporting or recordkeeping requirement, or other similar method.

(m) "Interagency reporting requirement" means any requirement that an agency report information to another agency or agencies.

(n) "Modify" means to approve in part and disapprove in part.

(o) "Penalty" means the imposition by an agency or court of a fine or other punishment; judgment for monetary damages or equitable relief; or revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit.

(p) "Person" means an individual, partnership, association, corporation, (including operations of government owned contractor-operated facilities), business trust, legal representative, organized group of individuals, state, territory, or local government or component thereof. Current employees of the federal government are excluded from this definition for purposes of the collection of information within the scope of their employment. Military reservists and members of the National Guard are considered Federal employees when on active duty, and for purposes of obtaining information about duty status. Retired and other former federal employees are included entirely within the definition of "person."

(q) "Practical utility" means the actual, not merely the theoretical or potential, usefulness of information to an agency, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information in a useful and timely fashion. In determining whether information will have "practical utility," OMB will take into account whether the agency demonstrates actual timely use for the information either to carry out its functions or to make it available to the public, either directly or by means of a public disclosure or labeling requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction. In the case of general purpose statistics or recordkeeping requirements, "practical utility" means that actual uses can be demonstrated.

(r) "Recordkeeping requirement" means a requirement imposed by an agency on persons to maintain specified records and includes requirements that information be maintained or retained by persons but not necessarily provided to an agency.

(s) "Reporting requirement" means a requirement imposed by an agency on persons to provide information to another person or to the agency. Reporting requirements may implicitly or explicitly include related recordkeeping requirements.

(t) "Sponsor." A federal agency is considered to "sponsor" the collection of information if the agency collects the information, causes another agency to collect the information, contracts or enters into a cooperative agreement with a person to collect the information, or requires a person to provide information to another person. A collection of information undertaken by a recipient of a federal grant is considered to be "sponsored" by an agency only if:

(1) The recipient of a grant is collecting information at the specific request of the agency; or

(2) The terms and conditions of the grant require specific approval by the agency of the collection of information or the collection procedures.

(u) "Ten or more persons" refers to the persons to whom an information collection request is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the request during that period, including independent state or local entities and separately incorporated subsidiaries or affiliates, but not including employees of the respondent within the scope of their employment, or contractors engaged for the purpose of complying with the information collection request.

(1) Any recordkeeping or reporting requirement contained in a rule of general applicability is deemed to involve ten or more persons.

(2) Any information collection request addressed to all or a substantial majority of an industry is presumed to involve ten or more persons.

§ 1320.8 Agency Head and Senior Official responsibilities.

(a) Except as provided in § 1320.8(b) of this section, each agency head shall designate a Senior Official to carry out the responsibilities of the agency under the Act.

(1) The Senior Official shall report directly to the head of the agency and shall have the authority, subject to that of the agency head, to carry out the responsibilities of the agency under the Act and this Part.

(2) The Senior Official shall independently assess all collections of information to ensure that they meet the criteria specified in § 1320.4(b) and that the agency conducts no collection of information that does not display a currently valid OMB control number.

(b) An agency head may retain full undelegated review authority for any component of the agency which by statute is required to be independent of any agency official below the agency head. For each component for which responsibility under the Act is not delegated to the Senior Official, the agency head shall be responsible for the performance of those functions.

(c) Upon request of the Director, the head or the Senior Official of each agency (other than an independent regulatory agency) shall make its services, personnel, and facilities available to OMB for the performance of Paperwork Reduction Act functions, unless such head or Senior Official determines in writing that the provision of such resources is impracticable.

§ 1320.9 Delegation of approval authority.

(a) The Director may, after complying with notice and comment procedures of Title 5 U.S.C. Chapter 5, delegate OMB review of some or all of an agency's collections of information to the Senior Official, or to the agency head with respect to those components of the agency for which he has not delegated authority.

(b) No delegation of review authority shall be made unless the agency demonstrates to OMB that the Senior Official or agency head to whom the authority would be delegated:

(1) Is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved, and

(2) Has sufficient resources to carry out this responsibility effectively.

(c) OMB may limit, condition, or rescind, in whole or in part, at any time, such delegations of authority, and reserves the right to review any individual collection of information, or part thereof, sponsored by an agency, at any time.

(d) Subject to the provisions of this part, and in accord with the terms and conditions of each delegation as specified in Appendix A to this part, the Director delegates review and approval authority to the following agencies:

(1) Board of Governors of the Federal Reserve System.

[48 FR 13689, Mar. 31, 1983, as amended at 49 FR 20793, May 16, 1984]

§ 1320.10 Information collection budget.

Each agency's Senior Official, or agency head in the case of any agency for which the agency head has not delegated responsibility under the Act for any component of the agency to the Senior Official, shall develop and submit to OMB, in such form and in accordance with such procedures as OMB may prescribe, an annual comprehensive budget for all collections of information from the public to be conducted or sponsored by the agency in the succeeding twelve months. If during the course of such year, the agency proposes a collection of information not included in the annual budget, it shall, in accordance with such instructions as OMB may provide, either make offsetting reductions in other items in the budget or obtain supplemental authorization for the additional collection. For good cause, and where it is possible to meet its statutory responsibilities by other means, OMB may exempt any agency from this requirement.

§ 1320.11 Agency submissions of collections of information.

(a) Agency submissions of collections of information for OMB review may only be made by the agency head or Senior Official, or their designee. Submissions shall be made in accordance with such procedures and in such form as the Director may prescribe. Submissions shall provide sufficient information to permit consideration of the criteria set out in § 1320.4 (b) and (c), shall include an estimate of burden, calcuated in a manner prescribed by OMB, shall identify any significant burdens placed on a substantial number of small businesses or other small entities, and shall contain such additional supporting material as the Director may request.

(b) Agencies shall provide copies of the material submitted to OMB for review promptly upon request by any person.

(c) OMB shall review all agency submissions in accordance with the standards set forth in § 1320.4 (b) and (c).

(d) In determining whether to approve, disapprove, modify, review, initiate proposals for changes in or stay the effectiveness of its approval of, any collection of information, OMB shall consider any public comments received, and may provide the agency and interested persons additional opportunities to be heard or to submit statements in writing.

(e) Agencies shall submit collections of information contained in proposed rules published for public comment in the FEDERAL REGISTER in accordance with the requirements set forth in § 1320.13. Agencies shall submit collections of information contained in current regulations that were published as final rules in the FEDERAL REGISTER in accordance with the requirements set forth in § 1320.14. Agencies shall submit information collection requests other than those contained in regulations published as final rules in the FEDERAL REGISTER, in accordance with the requirements set forth in § 1320.12. Special rules for clearance and inventory of collections of information prescribed by an agency, but collected by another agency, are set forth in § 1320.15. Special rules for emergency processing of information collection requests are set forth in § 1320.17.

(f) Prior to the expiration date assigned to a collection of information, after consultation with the agency, OMB may decide to review the collection of information, and shall so notify the agency. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of the initial submission were materially in error. Upon such notification, the agency shall submit the information collection request or requirement for review under the procedures outlined in § 1320.12 or § 1320.14. The agency may continue to sponsor the collection of information while the submission is pending. For good cause, after consultation with the agency, OMB may stay the effectiveness of its approval of any information collection request not specifically required by agency rule, whereupon the agency shall cease sponsoring such request while the submission is pending, and shall publish a notice in the FEDERAL REGISTER to that effect.

(g) Whenever the persons to whom a collection of information is addressed are primarily educational agencies or institutions or whenever the purpose of such activities is primarily to request information needed for the management or formulation of policy related to federal education programs, or research or evaluation studies related to implementation of federal education programs, the collection of information shall be submitted to OMB in accordance with the procedures outlined in this Part. Such request or requirement will be reviewed by the Federal Education Data Acquisition Council (FEDAC), or organizational unit fulfilling the same statutory function within the Department of Education, prior to approval or disapproval by OMB. Collections of information addressed to educational agencies or institutions and submitted to the Secretary of Education under the provisions of Title 20 U.S.C. Section 1221-3 shall be submitted by the Secretary of Education to OMB for approval in accordance with procedures contained in this Part, in time to receive OMB approval and to be announced publicly by the agency by the February 15 preceding the school year in which the information is to be collected.

(h) No substantive or material modification may be made by an agency in an information collection request or requirement after it has been assigned an OMB control number unless the modification has been submitted to OMB for review and approval pursuant to the procedures outlined in this Part.

(i) OMB will reconsider its disapproval of a collection of information upon the written request of an agency head or Senior Official only if the sponsoring agency can provide significant new or additional information relevant to the original decision.

(j) For purposes of time limits for OMB review of collections of information, any submission received by OMB after 12:00 noon will be deemed to have been received on the following business day.

§ 1320.12 Clearance of information collection requests.

Agencies shall submit all collections of information, other than those contained in proposed rules published for public notice and comment, or in current regulations that were published as final rules in the FEDERAL REGISTER, in accordance with the following requirements:

(a) On or before the day of submission to OMB, the agency shall forward a notice to the FEDERAL REGISTER stating that OMB approval is being sought. The notice shall direct requests for information, including copies of the proposed information collection request and supporting documentation, to the agency, and shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the FEDERAL REGISTER, together with the date of expected publication, shall be included in the agency's submission to OMB.

(b) Within 60 days of its receipt of a proposed information collection request, OMB shall notify the agency involved of its decision to approve, modify, or disapprove the request and shall make such decision publicly available. OMB may extend this 60-day period for an additional 30 days upon notice to the agency. Upon approval of an information collection request, OMB shall assign a control number and an expiration date. OMB shall not approve any information collection request for a period longer than three years.

(c) If OMB fails to notify the agency of its approval, disapproval, or extension of review within the 60-day period (or 90-day period if notice of an extended review has been given), the agency may request, and OMB shall assign without further delay, a control number, which shall be valid for not more than one year.

(d) No information collection request may become effective until the agency has displayed a valid OMB control number (and, unless OMB determines it to be inappropriate, an expiration date).

§ 1320.13 Clearance of collection of information requirements in proposed rules.

Agencies shall submit collection of information requirements contained in proposed rules published for public comment in the FEDERAL REGISTER in accordance with the following requirements:

(a) The agency shall include in the preamble to the Notice of Proposed Rulemaking a statement that the collection of information requirements contained in the rule have been submitted to OMB for review under Section 3504(h) of the Act. The statement shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency].

(b) All such submissions shall be made to OMB not later than the day on which the Notice of Proposed Rulemaking is published in the FEDERAL REGISTER, in such form and in accordance with such procedures as the Director may direct. Such submissions shall include a copy of the proposed regulation and preamble.

(c) Within 60 days of publication of the proposed rule, OMB may file public comments on collection of information provisions. Such comments shall be in the form of an OMB Notice of Action, which shall be sent to the Senior Official or agency head, or their designee, and which shall be made a part of the agency's rulemaking record.

(d) If an agency submission is not in compliance with paragraph (b) of this section, OMB may disapprove the collection of information requirement in the proposed rule within 60 days of receipt of the submission. If an agency fails to submit a collection of information requirement subject to this Section, OMB may disapprove it at any time.

(e) When the final rule is published in the FEDERAL REGISTER, the agency shall explain how the final rule responds to any comments received from OMB or the public. The agency shall include an identification and explanation of any modifications made in the rule, or explain why it rejected the comments. If requested by OMB, the agency shall include OMB's comments in the preamble to the final rule.

(f) If OMB has not filed public comments pursuant to § 1320.13(c), or has approved the collection of information requirement contained in a rule before the final rule is published in the FEDERAL REGISTER, OMB may assign a control number prior to publication of the final rule, and the agency may display the number in its publication of the final rule.

(g) On or before the date of publication of the final rule, the agency shall submit the final rule to OMB, unless it has been approved pursuant to § 1320.13(f) (and not substantively or materially modified by the agency after approval). Not later than 60 days after publication OMB shall approve, modify, or disapprove the collection of information requirement contained in the final rule. Any such disapproval may be based on one or more of the following reasons, as determined by OMB:

(1) The agency failed to comply with paragraph (b) of this section;

(2) The agency had substantially modified the collection of information requirement contained in the final rule from that contained in the proposed rule, without providing OMB with notice of the change of sufficient information to make a determination concerning the modified collection of information requirement, at least 60 days before publication of the final rule; or

(3) In cases where OMB had filed public comments pursuant to paragraph (c) of this section, the agency's response to such comments was unreasonable, and the collection of information is unnecessary for the proper performance of the agency's functions.

(h) After making such decision to approve, modify, or disapprove a collection of information requirement, OMB shall so notify the agency. If OMB approves the collection of information requirement, or if it has not acted upon the submission within the time limits of this Section, OMB shall assign a control number. If OMB disapproves the collection of information requirement, it shall make the reasons for its decision publicly available.

(i) OMB shall not approve any collection of information requirement for a period longer than three years. Approval of any collection of information submitted under this Section will be for the full three-year period, unless the Director determines that there are special circumstances requiring approval for a shorter period.

(j) After receipt of notification of OMB's approval, disapproval, or failure to act, and prior to the effective date of the rule, the agency shall publish a notice in the FEDERAL REGISTER to inform the public of OMB's decision. If OMB has approved or failed to act upon the collection of information requirement, the agency shall include the OMB control number in such notice. A collection of information requirement may not become effective until OMB has assigned a control number, and such number is displayed.

§ 1320.14 Clearance of collections of information in current rules.

Agencies shall submit reporting and recordkeeping requirements contained in current regulations that were published as final rules in the FEDERAL REGISTER in accordance with the following procedures:

(a) Collections of information not previously reviewed by OMB or the General Accounting Office, and not assigned currently valid control numbers, shall be submitted to OMB for review prior to December 31, 1983 in accordance with an orderly schedule to be developed by the agency with OMB concurrence. Previously approved collections of information subject to this section shall be submitted not later than 90 days before the expiration date of the OMB control number assigned to the collection.

(b) On or before the day of submission to OMB, the agency shall forward a notice to the FEDERAL REGISTER stating that OMB review is being sought. The notice shall direct requests for information, including copies of the collection of information and supporting documentation, to the agency, and shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the FEDERAL REGISTER, together with the date of expected publication, shall be included in the agency's submission to OMB.

(c) Within 60 days of its receipt of a collection of information submission, OMB shall notify the agency involved of its decision whether to approve or to initiate proposals for change in the collection and shall make such decision publicly available. OMB may extend this 60-day period for an additional 30 days upon notice to the agency. Upon approval of a collection of information, OMB shall assign a control number and an expiration date.

(d) OMB shall not approve any collection of information for a period longer than three years. Approval of any collection of information submitted under this Section will be for the full three year period, unless the Director determines that there are special circumstances requiring approval for a shorter period.

(e) If OMB fails to notify the agency of its approval, decision to initiate proposals for change, or extension of review within the 60-day period (or 90-day period if notice of an extended review has been given), the agency may request, and OMB shall assign without further delay, a control number, which shall be valid for not more than one year. Upon assignment of a control number by OMB, the agency shall display such number in accordance with § 1320.7(f)(2).

(f) If OMB has notified the agency of a decision to initiate proposals for change in the collection of information it shall extend the existing approval of the collection for the duration of the period required for consideration of proposed changes, including that required for OMB approval or disapproval of the collection of information under § 1320.12(b) or § 1320.13(g), as appropriate. In the case of a collection of information not previously approved, a control number shall be granted for such period. The agency shall publish a notice on the agency's next practicable publication date in the FEDERAL REGISTER to inform the public that OMB has initiated proposals for change in the collection, and has granted or extended its approval of the collection of information.

(g) Thereafter, the agency shall, within a reasonable period of time not to exceed 120 days, undertake such procedures as are necessary in compliance with the Administrative Procedure Act and other applicable law to amend or rescind the collection of information, and shall notify the public through the FEDERAL REGISTER. Such notice shall identify the proposed changes in the collections of information and shall solicit public comment on retention, modification, or rescission of such collections of information. If the agency employs notice and comment rulemaking procedures for amendment or rescission of the requirement, publication of the above in the FEDERAL REGISTER and submission to OMB shall initiate OMB clearance procedures under Section 3504(h) of the Act and § 1320.13. If the agency does not employ notice and comment rulemaking procedures for amendment or rescission of the collection of information, publication of such notice and submission to OMB shall initiate OMB clearance procedures under Section 3507 of the Act and § 1320.12. All procedures shall be completed within a reasonable period of time to be determined by OMB in consultation with the agency.

(h) OMB may disapprove in whole or in part, any collection of information subject to the procedures of this section if the agency:

(1) Has refused within a reasonable time to comply with an OMB directive

to submit the collection of information for review;

(2) Has refused within a reasonable time to initiate procedures to change the collection of information; or

(3) Has refused within a reasonable time to publish a final rule containing the collection of information, with such changes as may be appropriate, or otherwise complete the procedures for amendment or rescission of the collection of information.

(i) Upon disapproval by OMB of a collection of information subject to this section, the OMB control number assigned to such collection shall immediately expire, and no agency shall conduct or sponsor such collection of information. Any such disapproval shall constitute disapproval of the collection of information request or requirement contained in the Notice of Proposed Rulemaking or other submissions, and also of the preexisting request or requirement directed at the same collection of information and therefore constituting essentially the same request or requirement.

§ 1320.15 Collections of information prescribed by another agency.

(a) Any collection of information prescribed by an agency and to be adopted as a Standard or Optional Form after approval by the General Services Administration (GSA) shall be submitted to OMB for approval through GSA in accordance with such procedures and in such form as the Director may prescribe.

(1) Standard and Optional Forms used for the collection of information must be approved by OMB and assigned a currently valid control number before they can be used.

(2) GSA, with the assistance of the agencies using the forms, shall submit annually to OMB a list of all Standard and Optional Forms in use during that year for the collection of information from the public, stating which agencies use these forms, the number of each form used by each agency, and an estimate of the burden required to complete each form. Burden estimates developed by GSA will be counted as burden imposed by each agency in proportion to the use of the information.

(b) Any other collections of information prescribed by an agency but collected by another agency or agencies shall be submitted to OMB for approval by the agency that prescribes the collection, in accordance with such procedures and in such form as the Director may prescribe. With the assistance of the agencies collecting the information, the agency making the submission shall inform OMB of which agencies collect the information and an estimate of the burden of the collection of information. Burden estimates developed by the submitting agency will be counted as burden imposed by each agency in proportion to their use of the information.

(c) In other respects, collections of information under this Section shall be treated under the standards and procedures of § 1320.11-14, as appropriate.

§ 1320.16 Interagency reporting.

In accordance with authorities in the Act, the Federal Records Act, and the Budget and Accounting Procedures Act, the General Services Administration (GSA) is directed to issue regulations or requirements for the management of interagency reporting and provide for the approval and clearance of interagency reporting, whether mandatory or voluntary. Upon request, GSA shall report to the Director on the status of interagency reporting. Judicial branch requirements contained in court orders or decrees and OMB and other Executive Office of the President requirements shall be exempt from the provisions of this section.

§ 1320.17 Emergency and expedited processing.

An agency head or the Senior Official may request emergency processing of submissions of information collection requests.

(a) Any such request shall be accompanied by a written determination that the collection of information is essential to the mission of the agency, and that public harm will result if normal clearance procedures are followed, or that an unanticipated event has occurred which will prevent or disrupt the collection of information or cause a statutory or judicial deadline to be missed if normal procedures are followed.

(b) The agency shall state the time period within which OMB should approve or disapprove the collection of information.

(c) The agency shall submit information indicating that it has taken all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information.

(d) OMB shall approve or disapprove each such submission within the time period stated under § 1320.17(b), provided such time period is consistent with the purposes of the Act.

(e) If OMB approves the collection of information it shall assign a control number valid for a maximum of 90 days after receipt of the agency submission.

(f) Upon request by an agency, OMB may agree to act on a collection of information submission on an expedited schedule, even though such submission may not qualify for emergency processing under this section.

§ 1320.18 Public access.

(a) In order to enable the public to participate in and provide comments during the clearance process, OMB will ordinarily make its paperwork docket files available for public inspection during normal business hours. Notwithstanding other provisions of this rule, requirements to publish public notices or to provide materials to the public may be modified or waived by the Director to the extent that public participation in the approval process would defeat the purpose of the collection of information; jeopardize the confidentiality of proprietary, trade secret, or other confidential information; violate state or federal law; or substantially interfere with an agency's ability to perform its statutory obligations. Provisions of this paragraph guaranteeing public availability of comments on agency collections of information will not be waived or modified.

(b) Agencies conducting or sponsoring an information collection request shall take reasonable steps to inform potential respondents of the identity of the federal agency sponsoring any collection of information, why the information is being collected, how it is to be used, whether responses to the request are voluntary, required to obtain or retain a benefit (citing authority), or mandatory (citing authority), and the nature and extent of confidentiality to be provided, if any (citing authority).

§ 1320.19 Independent regulatory agency override authority.

An independent regulatory agency may override OMB's disapproval or stay of effectiveness of approval of a collection of information by majority vote of its members or commissioners. The agency shall certify any such override to the Director, and shall explain in writing its reasons for exercising the override authority. OMB shall promptly assign an OMB control number, valid for the length of time requested by the agency, up to three years, to any information collection request or collection of information requirement as to which this authority is exercised. No override shall become effective until the independent regulatory agency has displayed the OMB control number.

§ 1320.20 Other authority.

(a) The Director shall determine whether any collection of information or other matter is within the scope of the Act, or of this Part.

(b) In appropriate cases, after consultation with the agency, the Director may initiate a rulemaking proceeding to determine whether an agency's collection of information is consistent with statutory standards. Such proceedings shall be in accordance with informal rulemaking procedures under Title 5 U.S.C. Chapter 5.

(c) Each agency is responsible for complying with the information policies, principles, standards, and guidelines prescribed by the Director.

(d) To the extent permitted by law, the Director may waive any requirements contained in this Part.

(e) Nothing in this Part shall be interpreted to limit the authority of the Director under the Paperwork Reduction Act of 1980 or any other law. **Nothing in this Part or the Paperwork Reduction Act shall be interpreted as increasing or decreasing the authority of OMB with respect to the substantive policies and programs of the agencies.**

APPENDIX A—AGENCIES WITH DELEGATED REVIEW AND APPROVAL AUTHORITY

1. The Board of Governors of the Federal Reserve System.

(a) Authority to review and approve collection of information requests, collection of information requirements, and collections of information in current rules is delegated to the Board of Governors of the Federal Reserve System.

(1) This delegation does not include review and approval authority over any new collection of information or any modification to an existing collection of information that:

(i) Is proposed to be collected as a result of a requirement or other mandate of the Federal Financial Institutions Examination Council, or other Federal executive branch entities with authority to require the Board to conduct or sponsor a collection of information.

(ii) Is objected to by another Federal agency on the grounds that that agency requires information currently collected by the Board, that the currently collected information is being deleted from the collection, and the deletion will have a serious adverse impact on the agency's program provided that such objection is certified to OMB by the head of the Federal agency involved, with a copy to the Board, before the end of the comment period specified by the Board on the FEDERAL REGISTER notices specified in (3)(i) below.

(iii) Would cause the burden of the information collections conducted or sponsored by the Board to exceed by the end of the fiscal year the Information Collection Budget allowance provided to the Board by OMB for the fiscal year-end.

(2) The Board may ask that OMB review and approve collections of information covered by this delegation.

(3) In exercising delegated authority, the Board will:

(i) Provide the public, to the extent possible and appropriate, with reasonable opportunity to comment on collections of information under review prior to taking final action approving the collection. Reasonable opportunity for public comment will include publishing a notice in the FEDERAL REGISTER informing the public of the proposed collection of information, notifying the public of the availability of copies of the "clearance package," and providing the public with the opportunity to comment. Such FEDERAL REGISTER notices shall also advise the public that they may also send a copy of their comments to the OMB/OIRA Desk Officer for the Federal Reserve Board.

(A) Should the Board determine that a new collection of information or a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation, the Board may approve of the collection of information without providing opportunity for public comment. At the earliest practical date after approving the collection of information, the Board will publish a FEDERAL REGISTER notice informing the public of its approval of the collection of information and indicating why immediate action was necessary.

(B) In such cases, before taking final action to reauthorize the collection of information for an additional period, the Board will take into account any comments received after the institution of the collection.

(ii) Provide the OMB desk officer for the Federal Reserve Board with a copy of the Board's FEDERAL REGISTER notice not later than the day the Board files the notice with the Office of the Federal Register.

(iii) Assure that approved collections of information are reviewed not less frequently than once every three years, and that such reviews are normally conducted before the expiration date of the prior approval. Where the review has not been completed prior to the expiration date, the Board may extend the report, for up to three months, without public notice in order to complete the review and consequent revisions, if any. There may also be other circumstances in which the Board determines that a three-month extension without public notice is appropriate.

(iv) Take every reasonable step to ensure that the collection of information conforms to the requirements of 5 CFR 1320.4(b). In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies. The Board will not approve a collection of information that it determines does not satisfy the guidelines set forth in 5 CFR 1320.6, unless it determines that departure from these guidelines is necessary to satisfy statutory requirements or other substantial need.

(v) Assure that each approved collection of information displays an OMB control number and that all collections of information, except those contained in regulations, display the expiration date of the approval.

(vi) Assure that each approved collection of information, together with a completed SF83, a supporting statement, a copy of each comment received from the public and other agencies in response to the Board's FEDERAL REGISTER notice or a summary of these comments, and a certification that the Board has approved of the collection of information in accordance with the provisions of this delegation is transmitted to OMB for incorporation into OMB's public docket files. Such transmittal shall be made as soon as practical after the Board has taken final action approving the collection. However, no collection of information may be instituted until the Board receives written or oral notification from OMB or OMB staff that the transmittal has been received.

(b) OMB will:

(1) Provide the Board in advance with a block of control numbers which the Board will assign in sequential order to, and display on, new collections of information.

(2) Provide a written notice of action to the Board indicating that Board approvals of collections of information have been received by OMB and incorporated into OMB's public docket files and inventory of currently approved collections of information.

(3) Review any collection of information referred by the Board in accordance with the provisions of section 1(a)(2) of this appendix.

(c) OMB may review the Board's paperwork review process under the delegation. The Board will cooperate in carrying out such a review. **The Board will respond to any recommendations resulting from such review and, if it finds the recommendations to be appropriate, will either accept the recommendations or propose an alternative approach to achieve the intended purpose.**

(d) This delegation may, as provided by 5 CFR 1320.9(c), be limited, conditioned, or rescinded, in whole or in part at any time. OMB will exercise this authority only in unusual circumstances and, in those rare instances, will do so, subject to the provisions of 5 CFR 1320.11(f), prior to the expiration of the time period set for public comment in the Board's FEDERAL REGISTER notices *and* generally only if:

(1) Prior to the commencement of a Board review (*e.g.*, during the ICB review), OMB has notified the Board that it intends to review a specific new proposal for the collection of information or the continued use (with or without modification) of an existing collection;

(2) There is substantial public objection to a proposed information collection; or

(3) OMB determines that a substantially inadequate and inappropriate lead time has been provided between the final announcement date of the proposed requirement and the first date when the information is to be submitted or disclosed.

When OMB exercises this authority it will consider that the period of its review began the day that OMB received the FEDERAL REGISTER notice provided for in section 1(a)(3)(i) of this Appendix.

(e) Where OMB conducts a review of a Board information collection proposal under section 1(a)(1), 1(a)(2), or 1(d) of this Appendix, the provisions of 5 CFR 1320.17 and 5 CFR 1320.19 continue to apply.

[49 FR 20793, May 16, 1984]

Part IV

Circulars

OMB directives to executive departments and agencies are issued in the form of circulars and bulletins. The former are used when the nature of the subject matter is of continuing effect; the latter when it requires single or one-time action. Such OMB directives are binding on executive branch officials unless contrary to law. Although circulars closely resemble regulations promulgated by agencies, OMB rarely submits them for public comment as is required for agency rulemaking under section 553 of the Administrative Procedure Act. Notice and comment proceedings are conducted by OMB when required by statute, see Part III, Regulations, or when it perceives the public impact of the directive sufficient to warrant it, see, e.g., proposed OMB Circular No. A-122, "Cost Principles for Non-Profit Organizations", 48 F.R. 3348 (1983); proposed OMB Circular No. 130, "Management of Federal Information Resources", 50 F.R. 10734 (1985). Although OMB circulars are not codified in the code of Federal Regulations, individual circulars may be obtained by writing to the Office of Administration, Publications Unit, Room G-236, New Executive Office Building, Washington, D.C. 20503, or by calling (202) 395-4660. See 5 C.F.R. 1310.3 (1985). Following is a list of currently effective circulars with a brief summary of the subject matter of each except for Circular A-1, describing OMB's system of circulars and bulletins, which is set out in full.

Circular No. A-1

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON 25, D. C.

August 7, 1952

CIRCULAR NO. A-1
Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Bureau of the Budget's system of Circulars and Bulletins to executive departments and establishments

1. Series of communications. This revision of Circular No. A-1, which replaces and rescinds Circular No. A-1 Revised, dated August 3, 1948, describes the Bureau's system of Circulars and Bulletins which are employed to communicate various instructions and information to the executive departments and establishments. The Circular series is used when the nature of the subject matter is of continuing effect. The Bulletin series is used when the nature of the subject matter requires single or one-time action by the departments and establishments or is of a transitory nature.

2. Circulars. Circulars are identified by the letter "A" and a number. When an instruction needs to be revised, the pertinent Circular will be reissued with the same number and a new date. When the subject matter of a Circular is of such a nature as to require frequent changes in order to keep it current, revised pages may be issued in lieu of reissuing the entire set of instructions in a Circular. These changes will be promulgated as a part of or attached to transmittal memorandums which will be numbered chronologically and identified by the Circular number.

3. Bulletins. Bulletins are issued in an annual series, numbered in chronological order. The last two numerals of the fiscal year of issuance are used to indicate the annual series; for example, Bulletin No. 53-1 is the first Bulletin issued in fiscal year 1953.

4. Instructions for use of Circulars and Bulletins. The terms "departments and establishments" used in the Circular and Bulletin series include any executive department, independent commission, board, bureau, office, agency, Government-owned or controlled corporation, or other establishment of the Government, including regulatory commission or board, and also the municipal government of the District of Columbia, but do not include the legislative or judicial branches of the Government.

The provisions of any Circular or Bulletin, except as otherwise specifically provided in any given Circular or Bulletin, shall be observed by every such department or establishment insofar as the subject matter pertains to the affairs of such department or establishment.

5. Distribution. Circulars and Bulletins are distributed only to the heads of executive departments and establishments, their budget officers, and agency officials who have been authorized by the heads of the departments and establishments to receive them.

6. Other regulations. Attention is also directed to the Budget-Treasury Regulations, issued jointly by the Bureau of the Budget and the Treasury Department, which are promulgated independently of the Circular and Bulletin series of the Bureau of the Budget.

FREDERICK J. LAWTON
Director

2. Circular No. A-3, "Government Periodicals". Prescribes policies and procedures governing determination and OMB approval for agency allocation of costs of printing.

3. Circular No. A-10, "Responsibilities for Disclosure with Respect to the Budget". Provides guidance for agency confidentiality and disclosure to Congress and the public about the President's annual budget and related documents.

4. Circular No. A-11, "Preparation and Submission of Budget Estimates". Contains instructions for agency preparation and submission of annual budget proposals to OMB and employment ceilings. See Transmittal Memorandum 54.

5. Circular No. A-12, "Object Classification". Provides a method of recording the financial transactions of the Federal government in terms of the nature of the services or articles for which the obligations are incurred, rather than in terms of the purpose or program served. Attachments to the circular set out the Object Classification Codes and Titles and the Object Classification Definitions.

6. Circular No. A-16, "Coordination of Surveying and Mapping Activities". Describes the responsibilities of Federal agencies with respect to coordination of national surveying and mapping programs.

7. Circular No. A-18, "Policies on the Construction of Family Housing". Sets forth policies for budgeting, planning and undertaking the construction of federally owned housing (exclusive of military barracks) for Federal personnel and for employees of government contractors.

8. Circular No. A-19, "Legislative Coordination and Clearance". Outlines procedures for the coordination and clearance by OMB of agency recommendations and official testimony on proposed, pending and enrolled legislation.

9. Circular No. A-20, "System of Control Over the Use of Foreign Currencies". Provides guidelines for the use of foreign currencies received by the United States without payment of dollars.

10. Circular No. A-21, "Cost Principles for Educational Institutions". Establishes principles for determining costs applicable to grants, contracts and other agreements with educational institutions.

11. Circular No. A-25, "User Charges". Sets forth policy guidelines and procedures for recovering costs of and assessing reasonable charges for the provision of certain government services and property.

12. Circular No. A-30, "Federal Employees Uniform Allowance Act". Regulates the administration of the Federal Employees Uniform Allowance Act which provides for the furnishing of uniforms or payments for uniforms for civilian government employees who are required to wear uniforms.

13. Circular No. A-31, "Distribution of Appropriations and Other Budget Authority Made to the President". Sets forth procedures for the distribution to and among Federal agencies of budget authority vested in the President.

14. Circular No. A-34, "Instructions on Budget Execution". Provides instructions to agencies on the execution of the budget including such matters as development of financial plans, apportionments, deferrals, funding control, operating budgets, budget reports, etc.

15. Circular No. A-45, "Policy Governing Charges for Rental Quarters and Related Facilities". Establishes principles and standardizes procedures by which Federal agencies set and administer rents for quarters and charges for related facilities supplied to employees and others.

16. Circular No. A-48, "Responsibilities for Planning Training Investments and Regulations Governing Reductions in Payments to Employees". Provides guidelines for encouraging training of employees and for reducing government payments to employees who, incident to training, receive contributions or awards from other organizations.

17. Circular No. A-49, "Use of Management and Operating Contracts". Establishes general criteria to assist Federal agencies in using management and operating contracts, which are cost-reimbursement type contracts for non-profit institutions, private businesses, or universities to administer government research or development programs, industrial facilities, or to provide other personal or professional services.

18. Circular No. A-50, "Audit Followup". Provides policies and procedures for use by executive agencies when considering followup to reports by the Inspectors General, GAO, and other executive branch or non-Federal auditors.

19. Circular No. A-51, "Planning and Conduct of the United States Program in Antarctica". Provides the basis for the planning, funding, management, and conduct of U.S. activities in Antarctica.

20. Circular No. A-62, "Policies and Procedures for the Coordination of Federal Meteorological Services". Prescribes policy guidelines and procedures for planning and conducting Federal meteorological services and applied research and development to improve such services, while reaffirming the Department of Commerce's central role.

21. Circular No. A-64, "Position Management Systems and Employment Ceilings". This circular was partially rescinded by Transmittal Memorandum-1, July 29, 1983. Its provisions with respect to employment ceilings are superceded by portions of Circular A-11.

22. Circular A-67, "Coordination of Federal Activities in the Acquisition of Certain Water Data". Prescribes guidelines for coordination of Federal acquisition of water data from streams, lakes, reservoirs, estuaries, and ground waters.

23. Circular A-70, "Legislation on Federal Credit Programs". Establishes policies and procedures to be followed in proposing legislation to extend, reverse or create Federal credit programs consistent with the Report of the Committee on Federal Credit Programs (February 11, 1963).

24. Circular No. A-72, "Federal Employees Occupational Health Service Programs". Establishes criteria for providing programs of health services under the Act of August 8, 1946, as amended, and for relating them to programs established to provide medical and other services and to eliminate health risks under the Federal Employees Compensation Act.

25. Circular No. A-73, "Audit of Federal Operations". Sets forth policies to be followed in the audit of Federal operations and programs in order to promote improved audit practices, to achieve more efficient use of audit staff, to improve coordination of audits, and to emphasize the need for early audits of new or substantially changed programs.

26. Circular No. A-76, "Performance of Commercial Activities". Establishes policy for acquiring products and services either by contract with commercial sources or in-house using government facilities or personnel.

27. Circular A-87, "Cost Principles for State and Local Governments". Establishes principles and standards for determining costs applicable to grants, contracts, and other agreements with State, local and Indian tribal governments.

28. Circular No. A-88, "Indirect Cost Rates, Audit, and Audit Followup at Educational Institutions". Provides policies for Management of Federal grants, contracts, or other agreements with educational institutions.

29. Circular No. A-89, "Catalogue of Federal Domestic Assistance". Establishes policies for development of and issuance of "Catalogue of Federal Domestic Assistance".

30. Circular No. A-94, "Discount Rates to Be Used in Evaluating Time-Distributed Costs and Benefits". Prescribes a standard discount rate to be used in evaluating the measurable costs and benefits of programs or projects when they are distributed over time.

31. Circular A-97, "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government Under Title III of the Intergovernmental Cooperation Act of 1968". Promulgates rules authorized by the Act and provides for the coordination of the action of Federal departments and agencies in exercising the authority contained in Title III of the Act.

32. Circular A-99, "Direction and Control of Litigation". Establishes guidelines for legislative provisions covering the direction and control of litigation on behalf of departments and agencies.

33. Circular A-102, "Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments". Promulgates standards for administering grants to State, local and Indian tribal governments, and for the implementation of sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968.

34. Circular A-104, "Comparative Cost Analysis for Decisions to Lease or Purchase General Purpose Real Property". Prescribes the economic basis for determining whether general purpose real property to be acquired for government programs should be leased or purchased.

35. Circular A-105, "Standard Federal Regions". Establishes ten standard Federal regions, uniform regional boundaries, and common regional office headquarter locations, as a long range goal for all domestic agencies.

36. Circular A-106, "Reporting Requirements in Connection with the Prevention, Control, and Abatement of Environmental Pollution at Existing Federal Facilities". Provides procedures for implementing section 3(a)(3) of Executive Order No. 11,752, pertaining to the control of environmental pollution from existing Federal facilities.

37. Circular A-109, "Major Systems Acquisitions". Establishes policies for major acquisitions such as office buildings, hospitals, transportation systems, and defense and space systems.

38. Circular No. A-110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations".

39. Circular A-112, "Monitoring Federal Outlays". Provides instructions for the preparation and submission of reports monitoring spending and the government's overall cash and debt operations.

40. Circular No. A-114, "Management of Federal Audiovisual Activities". Prescribes policies and procedures for improving the management of Federal audiovisual activities by encouraging use of audiovisual products, where cost effective and otherwise appropriate, as support tools for government programs, and by discouraging their use as tools to promote an agency or to provide forums for agency opinions on broad subjects without specific program reference.

41. Circular A-119, "Federal Participation in the Development and Use of Voluntary Standards". Establishes policy for working with, and using the products of, private sector standards organizations which develop or coordinate voluntary standards for materials, products, systems, services, processes, and practices.

42. Circular No. A-120, "Guidelines for the Use of Consulting Services". Establishes policy and guidelines for executive branch agencies to use in determining and controlling the use of consulting services obtained from individuals and organizations.

43. Circular No. A-122, "Cost Principles for Non-Profit Organizations". Provides a set of guidelines for determining costs of grants, contracts, and other agreements with non-profit organizations.

44. Circular No. A-123, "Internal Control Systems". Prescribes policies and standards for establishing, managing, and reporting on internal agency program and administrative control.

45. Circular No. A-124, "Patents — Small Business Firms and Non-Profit Organizations". Provides policies and procedures with respect to inventions made by small business firms and non-profit organizations, including universities, under funding agreements with Federal agencies where a purpose is to perform experimental, developmental, or research work.

46. Circular No. A-125, "Prompt Payment". Prescribes policies and procedures to be followed by executive departments and agencies in paying for property and services acquired under Federal contract.

47. Circular No. A-126, "Improving the Management and Use of Government Aircraft". Prescribes policies to be followed by executive agencies in acquiring, managing, using, accounting for the costs of, and disposing of aircraft configured to carry passengers or cargo in order to improve the management of government aviation resources.

48. Circular No. A-127, "Financial Management Systems". Prescribes policies and procedures to be followed by executive branch departments and agencies in developing, operating, evaluating, and reporting on internal financial management systems.

49. Circular No. A-128, "Audits of State and Local Governments". Establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

50. Circular No. A-129, "Managing Federal Credit Programs". Prescribes policies and procedures for managing Federal credit programs; for collecting loans and other receivables; and sets standards for extending credit, servicing accounts, collecting delinquent receivables, and writing off uncollectable accounts.

51. Circular No. A-130, "Management of Federal Information Resources". Provides a general framework for management of Federal information resources through the implementation of OMB authority under the Paperwork Reduction Act with respect to section 3504(b), general information policy, section 3504(e), records management, section 3504(f), privacy, and section 3504(g), Federal automatic data processing and telecommunications; the Privacy Act of 1974, 5 U.S.C. 552a; sections 111 and 254 of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 759; the Budget and Accounting Act of 1921, 31 U.S.C. et seq.; and Executive Order No. 12,046. The Circular complements 5 C.F.R. 1320, "Controlling Paperwork Burden on the Public", which implements other sections of the Paperwork Reduction Act dealing with controlling the reporting and recordkeeping burden placed on the public.

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